S. HRG. 98-177

# MAIL ORDER CONSUMER PROTECTION AMENDMENTS OF 1983

## HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES

OF THE

## COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

ON

## S. 450

TO AMEND TITLE 39, UNITED STATES CODE, TO STRENGTHEN THE INVESTIGATORY AND ENFORCEMENT POWERS OF THE POSTAL SERVICE BY AUTHORIZING CERTAIN INSPECTION AUTHORITY AND BY PROVIDING FOR CIVIL PENALTIES FOR VIOLATIONS OF ORDERS UNDER SECTION 3005 OF SUCH TITLE (PERTAINING TO SCHEMES FOR OBTAINING MONEY BY FALSE REPRESENTATION OR LOTTERIES), AND FOR OTHER PURPOSES

MARCH 2, 1983

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

20-702 O WASHINGTON : 1983

S401-58

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# MAIL ORDER CONSUMER PROTECTION AMENDMENTS OF 1983

WEDNESDAY, MARCH 2, 1983

U.S. SENATE,
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, D.C.*

The subcommittee met at 10:05 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens (chairman of the subcommittee) presiding.

Present: Senator Stevens.

Staff present: Wayne A. Schley, staff director; Edwin S. Jayne, minority staff director; Pat Halcomb, chief clerk; Mary Gore; Merry Halamandaris; and John Rixey.

## OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Good morning.

We are here this morning to receive testimony on S. 450, introduced by Senators Heinz and Glenn, the chairman and ranking member of the Senate Committee on Aging; Senator Pryor, former ranking member of this subcommittee; and myself. The purpose of this legislation is to improve the U.S. Postal Service's ability to protect the public from being injured by false representation schemes which utilize the mail.

This legislation, if enacted into law, will increase the investigatory and enforcement powers of the Postal Service yet, at the same time, preserve the rights of an individual to freedom of speech.

This bill was the subject of an extensive Senate field hearing in Arkansas and five different hearings in the House. These hearings resulted in modifications of the original Senate bill to meet the public concern that excessive police powers were being given to the Postal Service.

The original bill passed the Senate on May 19, 1982, by unanimous consent, and the later modified bill passed the House of Representatives by a vote of 320 to 61.

The mail order industry is one of the fastest growing segments of the mail volume. This $26 billion a year industry provides a key to the improving financial picture of the entire U.S. Postal Service. It is also an industry which has become essential in providing a convenient way for those living in rural America or who are immobile to do their shopping. Without the mail order industry, the necessities and conveniences of life just could not be obtained.

We in Alaska have a specific problem that has been particularly aggravating. The media has played up stories about the abundance of high paying jobs in Alaska. To the unemployed and to the individual making the minimum wage, such stories are almost irresistible. Con artists use this human desire to better one's self by advertising phony job information or schemes that either promise employment or "inside" employment information for a fee.

In most cases, the information that was being sold was obtainable at no cost from the Alaska State Department of Labor.

One recent scheme offered was to transport unsuspecting victims to Alaska for jobs waiting when they disembark. In my cosponsoring statement on this legislation, I included a U.S. News and World Report article documenting this scheme which left Alaska-bound workers waiting on the Los Angeles dock for a ship that was never going to come and $350 poorer.

I want to submit into the record a much longer statement on this bill, but it is one that we are vitally interested in and I am vitally interested in, and I welcome you all here this morning.

[Senator Stevens' prepared statement follows:]

PREPARED STATEMENT OF SENATOR STEVENS

The United States Postal Service provides for this nation and its people one of the most important, viable, and consistent forms of communication and commerce in the world. The beauty of our current postal system is that it encourages all retailers to utilize the U.S. mail to sell their goods and services in every corner of this nation.

We all know the history of the Sears and Roebuck and Montgomery Ward catalogs which brought mass retailing to the western frontiers, allowing those living in the remote areas of the nation to enjoy some of the comforts that their brothers and sisters in the cities were able to enjoy. That business has grown and developed, and has proved to be especially important. The current mail order industry is a $26 billion a year business.

The mail order industry and the U.S. mail have improved all of our lives to such an extent it is almost impossible to detail. With this increased utilization of the mail to carry goods comes increased usage of the mail to defraud the public. Schemers and con artists have developed the fine art of promoting misleading advertisements. They use the mail not only to receive income but they also use the fact that having a federal agency deliver their advertised product will help convince the unsuspecting public of the authenticity of their bogus product.

As the number of schemes increase, so does their sophistication. One of those currently serving a prison term for mail fraud, Hap Seiders, has testified:

"The one thing that I have learned by being in prison is there are a million schemes from phony stocks and commodities to land deals which can be targeted against the elderly and there are thousands of con men in prisons who are being reeducated who can hardly wait to get out to try some of the new schemes that they have learned in prison. There is so much money involved and the chances of getting caught, prosecuted and sentenced to jail are so slim that many con men look at jail time as an acceptable professional risk."

These con men waiting to get out of prison so they can bilk the unwary are hampered primarily by U.S. Postal Service statutes. This authority dealing with false representation is well over 100 years old. These statutes are totally inadequate to combat the white collar crime of today.

A larger national problem is the effect of mail fraud schemes on the elderly. Although the elderly comprise 11 percent of the population, over 60 percent of all mail fraud schemes involve the elderly. They involve work at home, security, franchise, distributor, and commodities fraud schemes.

Why the elderly? As one hearing witness stated:

"For one thing, they grew up in a different, more trusting, less cynical era. For another thing, the elderly usually have some money some where, either they bought a house 30 years ago and it has appreciated tremendously or a spouse has passed away leaving the proceeds from a life insurance policy. The third thing is that they are not accustomed to spending a lot of money or investing throughout their life-

times and they make easy marks for fast talking salesmen because of their limited business experience. The final factor is what I call a desire for immortality. They are often consumed with the desire to do something or leave a little something for their children or grandchildren. All these factors together with the notion of continuing to provide for themselves in independence throughout their later lives combines to make them easy targets, and deserving of special protections."

In addition to those comments, I would add that there is a perception that if something is sent through the U.S. mail, somehow or somewhere there are laws that would forbid any wrong-doer from utilizing this federally-protected communication and distribution system from defrauding anyone. Although there are laws on the books, the problem is that these laws are over 100 years old and simply don't meet the technology and sophistication of today.

One of the basic statutes used by the Postal Service to prevent such schemers from succeeding is the false representation provision in the postal law (39 U.S.C. 3005), established in 1872 and since modified. This law is ineffective. Under the existing law, the only real enforcement tool available to the U.S. Postal Service is a "stop mail" order, which may be issued only after a hearing is held before an Administrative Law Judge pursuant to the Administrative Procedures Act.

But, even where a "mail stop" order is issued, the promotor is free to change his name, obtain a new post office box, and continue the same scheme. The Postal Service then must start all over again, ask for another hearing, and begin the slow and tedious process once again, giving plenty of time for the shrewd operator to move again.

Many deceptive advertising schemes simply state that it will take 30 to 60 days before the merchandise will be sent, giving them plenty of time to collect as much money as possible before they send out the advertised product. In fact, approximately 95 percent of the people who are going to respond to a particular ad will do so within two or three weeks of the ad's appearance. Because the Postal Service must obtain a sample of the advertised item in order to present its case, having to wait this length of time to begin its proceedings simply means its "mail stop" order will be issued only after most of those who will respond have done so.

The existing civil enforcement mechanism is simply not geared to today's mail schemes. There are two major shortcomings of the current law: (1) the Postal Service is unable to promptly obtain an advertised product or service for testing or for evidentiary purposes, and (2) the existing civil statutes have virtually no deterrent effect.

S. 450 would remedy those glaring faults substantially by allowing the Postal Service to issue a cease and desist order requiring the person or persons to cease in engaging in the false representation scheme. Such an order, however, can only be issued after a full adversarial hearing before an Administrative Law Judge and the order is subject to judicial review by the federal district courts.

The Act would permit the Postmaster General or his agent to tender to the advertiser the price of any item or service advertised through the mail. However, the Postal Service's agent must accurately indentify himself, state the nature of the investigation, and inform the advertiser that failure to comply may be presented to a court as a factor to be weighed in deciding whether there is sufficient cause to issue a temporary restraining order directing the Postal Service to withhold the advertiser's mail pending section 3005 proceedings. This section is particularly helpful in speeding up the investigation powers.

The bill provides for civil penalties for violators of false representation orders. Only a U.S. District Court may impose such penalties, which may amount to up to $10,000 per day, only after the court makes an independent determination that the subject is engaging in or has engaged in a violation of the cease and desist order.

To ensure that these new powers granted to the Postal Service are not in any way abused, the bill requires the Postal Service to provide Congress with semi-annual reports on the use of these new powers.

S. 450 is a good measure, aimed at helping the Postal Service combat a growing and very serious crime problem. The public expects that agents of the federal government, in this case the Postal Service, have the ability to protect them from unscrupulous operators. Unfortunately, the Postal Service does not now have the powers to live up to those expectations. It is incumbent upon us to provide this modest increase in authority.

Senator STEVENS. We have Mr. Nelson, who is the Assistant Chief Postal Inspector for Criminal Investigations, and George C. Davis, the Assistant General Counsel to the Consumer Protection Division of the U.S. Postal Service.

Gentlemen, I will start with you if you don't mind. Senator Pryor is involved with another matter. When he comes here, I would like to have him present his statement and go back to his other hearing.

Are Mr. Nelson and Mr. Davis here now?

Mr. DAVIS. Mr. Nelson has temporarily disappeared. We will find him.

Senator STEVENS. All right, sir. By the time we find him, Mr. Pryor may have been able to shake loose from the other hearing.

Come on in, Senator. These gentlemen are right there. Sit still, gentlemen. I know you have got to get back to another hearing, Senator.

Senator PRYOR. Thank you.

Senator STEVENS. So we want to give you the opportunity to present your statement. Just sit down.

Senator PRYOR. I will just join you all, if I might.

Senator STEVENS. We are happy to have you here.

Senator PRYOR. Thank you, Mr. Chairman.

May I proceed at this point?

Senator STEVENS. Please.

## TESTIMONY OF HON. DAVID PRYOR, U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Mr. Chairman, I appreciate your changing the schedule so I might come in. I do have a committee meeting going on downstairs, and I have a motion pending there in the Finance Committee, so I do appreciate your doing this, and I can do my statement in 60 seconds.

I am very honored to be here today in support of S. 450, which I am sponsoring together with you, Mr. Chairman, Senator Heinz, and Senator Glenn, to strengthen the investigatory and enforcement powers of the U.S. Postal Service in dealing with the problem of mail fraud.

Consumer fraud, as we know, is a very serious and growing problem which exists in our country today. Unfortunately, it is a problem which has reached epidemic proportions in recent years.

This legislation would allow the Postal Service to purchase directly from advertisers samples of mail-order products sold under potentially false advertising situations. This enables the Postal Service to immediately begin its investigation into this or other suspicious products.

Mr. Chairman, I do have a longer statement I would like to submit for the record in further explanation of S. 450, but I truly believe, I sincerely believe that any and all legitimate objections which might have been raised in the past year or year and a half about this proposal have been worked out.

I am very sorry this legislation did not make it through the Congress last year. As you know, we tried in every way that we could before Christmas to put the final stamp of approval on this legislation, and that effort was not successful.

I also want to thank you, Mr. Chairman, for, in a very timely fashion and expeditiously, holding hearings on this legislation early in the 98th Congress so that we might proceed successfully

before the end of this session to pass this long needed and overdue legislation.

Mr. Chairman, I thank you sincerely.

Senator STEVENS. Thank you.

It is my hope that we will get this bill to full committee and to the floor before the month is up.

Senator PRYOR. Thank you, sir.

Senator STEVENS. Thank you very much.

We will put in the record the statements of Senator Heinz, Senator Glenn, and Mrs. Knauer following the statement of Senator Pryor.

[The prepared statements of Senator Pryor, Senator Heinz, Senator Glenn, and Mrs. Knauer follow:]

STATEMENT OF SENATOR DAVID PRYOR

Mr. Chairman, I am pleased and honored to appear before this Subcommittee today to discuss legislation, S. 450, which I have sponsored together with Senators Stevens, Heinz, and Glenn to strengthen the investigatory and enforcement powers of the U.S. Postal Service in dealing with the problem of mail fraud.

Consumer fraud is a very serious and growing problem which exists in the Nation today. It is a problem which has existed since the beginning days of our country. Unfortunately, it is a problem which has reached epidemic proportions in recent years. Many of the phony business and investment scheme frauds are carried out through the mails. Although statutory authority exists which is intended to protect the American public from being injured by false representation schemes which utilize the mails, authority which the Postal Service has had for over 100 years, this authority needs to be modernized to give the Postal Service more effective tools to combat the shrewder, more sophisticated con artists who prey upon the American consumer.

Mail-order shopping is a very legitimate and necessary business activity which is estimated to be a $25 billion a year industry. While the vast majority of mail-order firms are responsible businesses, unfortunately many, unscrupulous firms also exist. Each year the Postal Inspection Service receives more than 200,000 mail fraud complaints. Our Nation's consumers now lose millions of dollars annually to individuals who are now able to circumvent the current postal fraud statute and who prey upon the sick, the poor, and the elderly. Some of these false representation schemes reportedly receive $20,000 or more per day. New protections are urgently needed to help end the numerous abuses which have been documented. Common fraudulent ads include those for phony gold coins, bogus land deals, worthless work-at-home schemes, useless health cures, and many more frauds. Hundreds of cases have been documented.

I introduced similar legislation, S. 1407, the Mail-Order Consumer Protection Amendments of 1982, during the 97th Congress. The legislation was passed by the Senate on May 19, 1982, after careful consideration and approval by the Senate Governmental Affairs Committee and the Subcommittee on Civil Service, Post Office, and General Services. A field hearing was held on the legislation on October 13, 1981, in Little Rock, Arkansas. S. 1407 was co-sponsored by 28 of my Senate colleagues including the Chairman and ranking minority member of the Senate Special Committee on Aging, which held an August 4, 1981, hearing on frauds against the elderly. Similar hearings and an investigation were also conducted by the House Select Committee on Aging under its distinguished Chairman, Congressman Claude Pepper, the sponsor of similar House legislation. In the December 1982 report by the Chairman of the Select Committee on Aging of the House of Representatives, entitled "Business and Investment Frauds Perpetrated Against The Elderly: A Growing Scandal," a report which contains hundreds of examples of mail fraud cases, it is concluded that the U.S. Postal Service does an excellent job of curbing abuses, but that their authority and resources have been limited. The report further suggests the need for enactment of legislation to strengthen the authority of the U.S. Postal Service to crack down on such fraud.

As a member of the Select Committee on Aging I became interested in this problem because, unfortunately, over 60 percent of the victims of these frauds are elderly citizens, most of whom are living on fixed incomes and literally counting their

pennies. Many of the victims have lost their entire life savings and are provided very little recourse for recovery.

The Postal Inspection Service has major responsibility for preventing such mail fraud and false representation schemes. Unfortunately, their powers of investigation are limited and in need of immediate improvement.

In order to investigate these cases of fraud, the Postal Service must send a postal money order for the suspected item and have the product tested. By the time the Postal Service recognizes a suspected quack offer, orders the product and submits it for testing, the companies have often closed down their operation or moved it to another State. Even if the company is still in existence, the Postal Service's only recourse under present law is to ask for a hearing and a court order to block incoming mail from being delivered to the address advertised.

This legislation would correct current law in the following ways. The bill would allow the Postal Service to purchase directly from advertisers samples of mail order products sold under potentially false advertising. This enables the Postal Service to immediately begin its investigation into the suspicious product. The Postal Service now purchases such samples by mail and the advertiser can forestall proceedings to enforce the statute by delaying shipment of the product.

This bill also provides that the Postal Service, after a full adversarial hearing before an administrative law judge, may issue orders to require persons to cease and desist from engaging in false representation schemes. Currently, the Postal Service may only issue stop-mail orders, which are easily circumvented by experienced con men, who simply move to a new address under a new business name.

Mr. President, very careful steps have been taken in this legislation to assure due process with respect to the issuance of such cease and desist orders. Such orders may be issued only after full adversarial hearings before an administrative law judge, pursuant to the Administrative Procedure Act.

The bill also would allow the U.S. district courts to assess civil penalties of up to $10,000 per day against persons who repeat advertising schemes after an administrative law judge has determined, following an on-the-record hearing, that the scheme violates the statute. The actual amount of the penalty is to be determined by the U.S. district court after consideration of the relevant facts of each case.

The bill also prohibits the Postal Service from enforcing the statute against advertisements for books and publications which accurately reflect the contents of the product.

Mr. President, this legislation as it has been refined now strikes a balance between civil liberties and the need to punish the shrewd operators who would fleece the most vulnerable members of our society. I urge my colleagues to join with me in supporting this measure. It will close certain loopholes in current law and it will give to the Postal Service needed enforcement tools to protect consumers and to fight fraudulent activities through the misuse of the mail.

I ask that a fact sheet prepared by my staff about this legislation be included in the hearing record.

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FACT SHEET ON S. 450

PURPOSE

To reduce delays on Postal Service investigations of violations of the false representations statute (39 U.S.C. 3005) and to discourage repeat violations of the statute.

S. 450 DOES—

1. Allow the Postal Service to purchase, directly from advertisers, samples of mail order products sold under suspected false advertising. The Postal Service now purchases such samples by mail and the advertiser can forestall proceedings to enforce the statute by delaying shipment of the suspicious product.

2. Allow the Postal Service—after full adversarial hearings before an adminstrative law judge—to issue orders to require persons to cease and desist from engaging in false representation schemes. Presently the Postal Service may only issue stop-mail orders which are easily circumvented.

3. Allow the U.S. district courts to assess civil penalties of up to $10,000 per day against persons who repeat advertising schemes after an adminstrative (on-the-record) determination is made that the scheme violates the statute. The court shall make an independent determination of violation and determine the amount of the fine. This is intended to act as a strong deterrent to repeat violators.

4. Authorize semiannual reports on investigative activities of the Postal Service to provide for careful oversight by the Congress.

5. Authorize the Postal Service to develop and carry out a program designed to provide consumer education to the public on schemes involving false representation through use of the mails.

S. 450 DOES NOT—

1. Allow the Postal Service to issue civil investigative demands (a form of a subpoena power) to obtain access to documents relevant to suspicious advertising.

2. Expand the current power of the Postal Service to police for mail fraud or any other statutory violation, nor is it a massive rewrite of the mail fraud statute. It simply will act to improve investigatory and enforcement powers to combat mail fraud, while, at the same time, taking into account all responsible concerns expressed regarding potential abuse of civil liberties.

3. Cost any money or create any new bureaucracy in government.

4. Permit the opening and inspection of mail without the prior issuance of a search warrant.

5. Allow the Postal Service to ban books from the mails. It will prohibit the Postal Service from enforcing the false representation statutes against advertisements for book and publications which accurately reflect the contents of the products.

6. Authorize search and seizure nor cease and desist orders without due process of law. The civil investigative demand authority has been deleted and a cease and desist order can be issued only after full adversarial hearings before an administrative law judge. Also in permitting the Postal Service to purchase suspicious products to begin investigations, the Postal agent must accurately identify himself and state the nature of the conduct under investigation.

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STATEMENT OF SENATOR JOHN HEINZ

Mr. Chairman: Thank you for providing me with the opportunity to comment upon S. 450, the Mail Order Consumer Protection Act of 1983.

The Senate Special Committee on Aging, which I am privileged to chair, has for some time been concerned with consumer frauds and economic deceptions and their impact upon elderly people. On August 4, 1981, the Senate Committee on Aging convened hearings in Harrisburg, Pennsylvania, focusing on consumer frauds and the elderly. Witnesses, including Virginia Knauer, Special Assistant to the President, and Director of the U.S. Office of Consumer Affairs; Kenneth Fletcher, Chief Postal Inspector, U.S. Postal Service and representatives of state consumer protection offices, identified a staggering array of frauds directed at the elderly. Mrs. Knauer displayed fraudulent medical devices such as an electrogalvanic bracelet and an acupressure massage mat. Mr. Fletcher dramatized the danger of mail order "miracle cures" by citing examples of cancer cures containing contaminated compounds. In at least one case, the purchaser died while attempting the "cure".

Terry Lazin, director of the Pennsylvania Bureau of Consumer Protection, testified her office receives about 5,000 complaints each year from senior citizens complaining of consumer crimes. She estimated that this figure represented only 5 percent of the total frauds actually perpetrated against the elderly.

Subsequently, the Committee initiated a survey to assess the size of this problem. Over 1,500 questionnaires were mailed to police chiefs, district attorneys, state attorney generals, and, consumer protection offices. The purpose of the questionnaire was to assess the nature and frequency of consumer and economic frauds, the impact of these frauds on the elderly, and the resources available to combat these abuses.

The response to the Committee's survey indicates:

(1) Consumer frauds are widespread and pervasive. They invade every aspect of a consumer's life from health care to housing.

(2) Consumer and economic frauds are increasing. Respondents report an increase of about 12 percent a year.

(3) The elderly are considered "prime targets" for these abuses. Over 77 percent of those responding indicated the elderly are more often the targets of fraud than the younger population. This targeting was attributed to perceptions of vulnerability, need, and isolation.

(4) Those who perpetrate these crimes are well organized, sophisticated and effective. Respondents reported "schools for scoundrels" organized by cons to tutor other cons in the fine art of making a "sting". Police reported it was not uncommon for cons to exchange "hit lists"—the names of those they had successfully defrauded—

upon leaving one location for another. The ultimate measure of the cons' success—their take—is incalculable. But if it could be calculated, it would almost certainly be measured in the billions.

(5) While, by every measure, consumer and economic frauds are increasing and present a significant threat to society, resources available to combat this problem are diminishing. Federal programs operated by the Law Enforcement Assistance Administration have been eliminated. Other federal funds earmarked for consumer service have been lost in block grants. Thirty-five percent of state consumer offices reported reductions in funds. Forty-seven percent indicated they had been level funded.

In an attempt to relate the frequency of specific frauds and their impact on the elderly, respondents were asked to identify the frauds they felt were most harmful to the elderly. The ten frauds identified, by frequency of response, are:

(1) Quackery and medical related frauds;
(2) Home repair and improvement frauds;
(3) Bunco schemes;
(4) Insurance frauds;
(5) Social frauds;
(6) Housing, land sale and rental frauds;
(7) Business opportunity frauds;
(8) Nursing home frauds;
(9) Automobile purchase and repair frauds; and
(10) Funeral fraud.

On March 1, 1983 the Committee held yet another hearing to explore further frauds and their impact upon elderly people. At that time, the Committee released its report, "Consumer Frauds and Elderly Persons: A Growing Problem" and heard testimony from all five Federal Trade Commission Commissioners, from law enforcement and consumer protection specialists, from an elderly person who had been victimized by several fraudulent schemes as well as from representatives of the United States Postal Service. Each of these witnesses offered testimony which confirmed the Committee's findings that frauds against the elderly are a growing and increasingly serious problem.

Through our work in these areas we have found that many elderly rely upon mail order sales as a means of accessing needed or desired products. Unfortunately, we have also found that nearly 60 percent of all mail fraud victims are people over age 65. We have found that the elderly are all too often specifically targeted by the host of mail order swindlers, con men and crooks.

While Postal authorities have been effective in combating many of these fraudulent practices, certain problems in their enforcement powers preclude them from doing the job as effectively as it should be. Many of the problems encountered by the Post Office authorities are remedied by S. 450. The bill would provide the Postal Inspection Service with many of the tools needed to hault the rise of mail fraud and to reduce the impact of this method of fraud upon all consumers and particularly upon our senior citizens.

It is for these reasons that I support S. 450 and urge your timely and favorable consideration of the measure.

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### Statement of Senator John Glenn

Mr. Chairman, I am pleased to have this opportunity to discuss with the Subcommittee the major problem of mail fraud and our proposed legislation to more effectively combat these crimes, which have such a devastating impact on many ill, low-income, and elderly Americans.

Every day trusting but desperate citizens are drawn to attractive newspaper and magazine advertisements that offer magic creams to "cure" arthritis, opportunities to supplement retirement income through backyard worm farms, and cancer and medigap insurance policies. These costly, phoney, ineffective, and sometimes dangerous products invade our homes not through unlocked doors or broken windows as a burglar would, but through the mailbox. The precise economic loss from mail fraud is incalculable because much is unreported, but it certainly costs consumers millions of dollars per year.

We are all aware of the serious economic, medical, and psychological effects of mail fraud from past congressional investigations and hearings. Just yesterday, the Senate Special Committee on Aging held a hearing on consumer frauds against the elderly. In testimony by Charles Nelson, Assistant Chief Postal Inspector for Criminal Investigations, we learned more about the activities of the Postal Service in

combating mail fraud against elderly citizens and other Americans. Mr. Nelson identified the following two problems that the Postal Service, which receives about 200,000 complaints per year alleging mail fraud, now faces in enforcing the consumer protection statutes.

First, the Postal Service must now order a suspicious product by mail just like any other consumer. Oftentimes, the mail order company waits 4–5 weeks until all orders are received before shipping the product. This delays the Postal Service investigation of the suspicious product.

Secondly, Mr. Nelson pointed out that the Postal Service is currently hampered in its enforcement efforts by the high recidivism rate among fraudulent mail order companies. Fraudulent companies may respond to "mail-stop" orders simply by changing their name or address and then starting their con games all over again. The Postal Service then must start a new investigation.

To protect consumers we must take strong federal action to combat fraudulent mail order companies with the same high level of zeal and fervor that they use to sell their products. I have joined with Senators Pryor, Stevens, and Heinz in introducing S. 450, the "Mail Order Consumer Protection Amendments of 1983". This legislation is urgently needed to help the Postal Service more effectively crack down on mail fraud practices which are perpetrated against so many of our most vulnerable citizens.

S. 450 has the following key provisions to reduce the current delays on Postal Service investigations as identified by Mr. Nelson and to discourage violations of the Criminal Mail Fraud Statute and the Administrative False Representation Statute.

(1) The Postal Service would be allowed to purchase samples of mail order products sold under potentially false advertising directly from advertisers, enabling the Postal Service to immediately begin its investigation into the suspicious product. Under present law, the Postal Service must purchase products through the mail and the company may delay shipment of the suspicious product.

(2) The bill allows the Postal Service, after full adversarial hearings before an administrative law judge, to issue orders requiring persons to stop from engaging in false advertising schemes. Under present law, the Postal Service can only stop incoming mail from being delivered to the advertised address. This "stop-mail" order can be circumvented by fraudulent companies simply if they change their address.

(3) The bill allows U.S. district courts to issue civil penalties of up to $10,000 per day against persons who continue to advertise products after an administrative law judge has determined, during an official hearing, that the advertising violates the law.

S. 450 will go a long way toward helping to protect consumers from fraudulent mail order companies without infringing on the constitutional rights of the persons involved. However, an effective response to the mail fraud problem must also unite federal, state, and local government officials, citizen groups and neighborhood associations, business leaders, and individuals in a cooperative effort. At the Aging Committee hearing yesterday, Steve Nicks, Director of the Wisconsin Office of Consumer Protection, told us that they sent guidelines to all newspaper editors in the State of Wisconsin warning them of false advertising schemes and advising them of how to spot false advertisements in their newspapers. Other state consumer protection units are working with the American Association of Retired Persons and other senior citizen groups in promoting consumer education and peer counseling. These types of federal, state, and community efforts are needed to successfully defeat and deter mail fraud artists.

I have been concerned about the mail fraud issue for many years and first introduced legislation to strengthen the investigatory and enforcement powers of the Postal Service in the 96th Congress. In the 97th Congress, both the House of Representatives and the Senate approved legislation to combat mail fruad, although differences in the House- and Senate-passed bills were not worked out before adjournment. I hope the current 98th Congress will extend a strong, helping hand to American consumers by taking prompt and final action of this bill.

THE WHITE HOUSE

WASHINGTON

March 15, 1983

Dear Mr. Chairman:

I would like to express my appreciation for the invitation to share with the Committee my views regarding S.450, the "Mail Order Consumer Protection Amendments of 1983." Although I was not able to appear personally before the Committee to deliver the following statement, I am very interested in this issue, especially since one significant responsibility as Special Assistant to the President is the concerns of our elderly consumers.

As you know, consumer mail order schemes are one of the most significant economic complaints from consumers. The United States Postal Service reports an average of 200,000 mail order complaints per year over the past several years. The Council of Better Business Bureaus (CBBB) reports that in 1981 they received 76,000 mail order complaints, approximately 20 percent of the total number of complaints reported.

For those consumers in our society who have limited mobility because of age, illness, or disability, the opportunity to shop through the mail is an especially important and valuable benefit. And it is important that we assure those who do or must rely on shopping by mail of the integrity and reliability of those who use the mailbox as their marketplace.

While the vast majority of mail order firms are ethical and responsible, the very nature of the business allows perpetrators of mail order schemes maximum opportunity to fleece the public. Consumers generally pay in advance without examining the product. The distance between buyer and seller precludes personal contact, makes civil suits uneconomic and impractical, and at times creates jurisdictional enforcement problems. Businesses may enter and leave the industry with relative ease and speed because the requirements for getting started are minimal. These characteristics, along with the present inadequate powers available to the Post Office, allow unscrupulous entrepreneurs to use mail order schemes to find victims, particularly amongst those least able to protect themselves--the less mobile, like the elderly -- and those who most need to rely upon purchasing by mail.

S.450 is a proposal aimed at curbing some of these abuses. This proposed legislation addresses two major hurdles that have impeded the Postal Services' ability to effectively detect and terminate deceptive mail order practices in a more timely manner.

Under present law, it is often difficult for the Postal Service to obtain advertised products in a timely manner in order to determine whether proceedings should be initiated to lessen the number and amount of losses suffered by victims of a mail order scheme. S.450 would allow the Postal Service to purchase directly from the seller a sample of the product or service; a failure by the seller to provide the article or service may be considered later in an impartial federal court proceeding.

In addition, this measure would strengthen the existing statute's deterrent effect by providing a penalty provision aimed at discouraging evasion of mail-stop orders issued. Mail order operations have been able to continue a scheme despite a mail stop order by simply using a new name or address when republishing their article or service. Imposing a civil penalty when appropriate should dissuade fraudulent promoters from continuing their enterprises. We defer to the Justice Department on the issue of who should handle litigation involving the assessment of civil penalties.

We appreciate the effort to develop legislation well-balanced to protect the legitimate interests of both the consumer and the honest mail order business person. Undoubtedly the most important factor in successfully addressing this problem will be increased consumer awareness through increased consumer education. I am very pleased that Section 4 of this proposal instructs the Postal Service to engage in just such an undertaking. A consumer equipped with the sophistication and knowledge to detect mail order schemes is certainly the most effective and least costly means we have of terminating abuses in this area.

In conclusion, I am gratified that this legislation has again been proposed and urge your Committee's prompt favorable consideration.

Sincerely,

Virginia Knauer

Virginia H. Knauer
Special Assistant to the President

The Honorable Ted Stevens
Chairman
Subcommittee on Civil Service,
Post Office, and General Services
Senate Committee on Governmental Affairs
United States Senate
57 Capital Hill Apartments
Washington, D.C. 20510

Senator STEVENS. Gentlemen, we are happy to have you here this morning.

**TESTIMONY OF CHARLES P. NELSON, ASSISTANT CHIEF POSTAL INSPECTOR FOR CRIMINAL INVESTIGATIONS, AND GEORGE C. DAVIS, ASSISTANT GENERAL COUNSEL, CONSUMER PROTECTION DIVISION, U.S. POSTAL SERVICE**

Mr. NELSON. Thank you, Mr. Chairman.

My name is Charles P. Nelson, and I'm the Assistant Chief Postal Inspector for Criminal Investigations. Accompanying me is Mr. George C. Davis, Assistant General Counsel for the Consumer Protection Division of the USPS Law Department.

With your permission, I will submit my complete statement for the record and cover a few highlights.

Senator STEVENS. Thank you, and all other statements will be printed in the record completely as the people appear here today.

Mr. NELSON. We support S. 450. The bill is very similar to legislation passed by the house during the last session. It differs from a bill passed by the Senate in the last Congress, but contains much of the same provisions. Unlike the previous Senate bill, S. 450 does not contain controversial provisions authorizing the issuance of administrative civil investigative demands to inspect records relating to suspected false advertising.

More than a century ago, Congress enacted the Criminal Fraud Statute, 18 United States Code, section 1341, and the Civil False Representation Statute, 39 United States Code, section 3005. But as direct mail marketing has grown, so has the small segment of the industry which engages in deceptive advertising.

Not only has a number of cases involving deceptive advertising, deceptive mail marketing, increased over the years, but so also has the sophistication of many deceptive mail order promotions. The Civil False Representation Statute, in particular, is becoming increasingly subject to the evasive tactics by such promoters.

This statute simply provides that persons selling goods or services by mail refrain from the use of advertising which will mislead prospective purchasers in any material respect. Unlike the Criminal Mail Fraud Statute, its purpose is not to punish intentional deception; rather, its purpose is to preclude consumer losses caused by misrepresentations whether or not deception was intended.

The principal sanction authorized by the statute is an administrative "mail stop order" which seeks to prevent the consumer's money from reaching the operator of the scheme by requiring its return to the sender.

The underlying expectation is that if the operator of the scheme is cut off from his profits, he must either reform his promotion to avoid misrepresentations or cease marketing his product by mail. This expectation is often not realized.

Mail stop orders are issued only after the advertiser is afforded a formal administrative hearing conducted pursuant to the Administrative Procedure Act. In these proceedings, the Postal Service must prove, by a preponderance of evidence, that the statute is being violated and the person against whom a mail stop order is

issued may seek judicial review of the Postal Service decision in Federal District Court.

Regrettably, however, the protection intended by the statute can readily be frustrated. S. 450 would address the problem by making two changes to the statute:

First, the bill would authorize the Postal Service to obtain, upon tender of the advertised price, any article or service being offered for sale by mail. The purpose of this provision is to counter a practice whereby unscrupulous promoters prevent the Postal Service from promptly obtaining evidentiary samples of falsely advertised items by postponing the filling of orders until after the advertising has run its course or, in some cases, forever.

The longer a promoter may keep us from obtaining a sample of his product, the longer we must defer our proceedings and the less mail will ultimately be stopped if a mail stop order is issued.

In our experience, the time required to obtain a product often exceeds 1 month. The bill would reduce this source of delay by making the advertiser's unreasonable failure to sell us the advertised product or service sufficient grounds for a Federal court, in its discretion, to take injunctive action under section 3007.

Second, the bill would correct the fact that the present statute has little or no deterrent effect. Mail stop orders may only stop remittances responding to a particular false advertisement using a particular trade name and/or address. Only mail so addressed is affected. A promoter who wishes to continue the same false advertising scheme, after a mail stop order has been issued against him, need only change his trade name or address and thereby escape the consequences of the outstanding mail stop order until we can complete additional administrative procedures.

It is common for promoters to repeatedly employ this tactic, and in each case, the public is injured in the interim between the resumption of the scheme and our completion of additional proceedings.

A few examples may help illustrate this point: a Chicago-based promoter peddled phony aphrodisiacs by mail using many different trade names and addresses to evade 25 administrative actions. After each action, he simply moved on to new addresses, establishing the same promotion under different names. Three promoters whose sales of so-called "look-alike" drugs through the mails were the subject of mail stop orders, promptly reestablished their operations under new names and new addresses.

A Chicago operator of a phony vacation package promotion reestablished the same scheme in Las Vegas using a new name, following district court proceedings under 39 United States Code, section 3007, which resulted in a consent order intended to terminate the scheme. A multimillion dollar promotion of phony hair growth potions adopted new trade names, moved to Florida and continued the scheme, and the operator of an envelope stuffing scheme in San Antonio was the subject of three separate section 3005 proceedings involving altered names and addresses.

S. 450 would authorize the Federal courts to impose a civil penalty upon those who violate mail stop orders. It would allow the Postal Service to order the promoter to cease and desist from continuing the false advertising scheme, thereby putting him on fair

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notice that resumption of the scheme could result in the imposition of a penalty.

The order authorized by the current statute places no obligation at all on the respondent. It is directed only to a postmaster.

The bill does not authorize any additional regulation of activities in the private sector, or impose any new recordkeeping or reporting requirements on any segment of the public. It does not authorize the Postal Service to impose any additional sanctions or penalties. All provisions of the bill providing new sanctions or penalties vest that authority in the Federal courts.

It does not necessitate an expansion of the resources devoted to enforcement of section 3005 by the Postal Service. We believe the bill is a carefully limited measure to fill in what experience has shown to be important omissions that have impaired the effectiveness of the false representations statute while avoiding the expansion of administrative powers.

We believe the bill also succeeds in diffusing various concerns raised in the hearings of S. 1407. As noted above, a controversial provision which would have allowed the issuance of civil investigative demands has been deleted. Also responding to concerns raised in the House hearings, the bill contains a provision designed to limit the application of 39 U.S. Code, section 3005, to advertisements for books and other publications. The so-called mirror image provision, which would be enacted as subsection 2(b) of 39 U.S. Code, section 3005, appears to strike a workable balance between the desirability of preventing the sale of printed matter by mail through false advertising and the individual's right, guaranteed by the First Amendment, to be free to market his ideas no matter how unpopular or invalid they may be.

The Supreme Court has held that the regulation of deceptive commercial advertising is not proscribed by the First Amendment, and in case law that has evolved in section 3005 cases, no distinction is drawn between advertising that falsely describes publications and advertising that falsely describes other products.

To date, none of the challenges to our position have been sustained by the courts. In no case has a court found that our action violated the First Amendment.

Advertising for products which consist in whole or in part of written matter, such as pamphlets, diagrams, memoranda, have been involved in many of our cases. For example, in the typical work-at-home scheme, the product consists of a memorandum or pamphlet telling the buyer how to operate a similar scheme.

The Supreme Court recently denied certiorari in a criminal mail fraud case where the Fifth Circuit Court of Appeals held that the First Amendment did not bar prosecution of the promoters of a work-at-home scheme.

In other recent cases involving the sale of publications through advertising which falsely describes the product, customers have received plans to build a 200-mile-per-gallon carburetor; ways to obtain $200 surplus jeeps; a method whereby anyone can obtain $500 and a free car from the Government; a diet which will clear arteries of accumulated plaque; high salaried employment in Alaska, and sure-fire betting systems.

We do not believe the proposed "mirror image" provision would prevent use of section 3005 in these kinds of cases. It will, however, provide guidance for postal investigators, administrative law judges and the courts and serve as a reminder of the limited constitutionally acceptable province for administrative action against advertising of this type.

In conclusion, I would respectfully suggest that the American people widely believe that they have a significant measure of protection against fraud and deception when using the mail system to purchase merchandise or services, to make investments or to seek employment. Sections 3005 and 3007 are among the important guarantors of this protection, and they are effective when not undermined through exploitation of loopholes.

We believe S. 450 would close some loopholes and allow the Postal Service to more effectively carry out the purpose of the statute. We recommend it be given favorable consideration by this committee.

Senator STEVENS. Thank you very much.

Mr. Davis, would you like to give your statement first and then I will ask you both questions?

Mr. DAVIS. I do not have one.

Senator STEVENS. You do not have one. What is the percentage of the cases you are involved in? How does it break down as far as false representation is concerned? Do you have any figures of land and stocks, investments, health and medical and others? Is there any general categorization of these cases?

Mr. NELSON. No; I would say that probably, if there is one single group, it would be work-at-home schemes. I do not have any final break down of them in total.

Senator STEVENS. Have you had other instances of the kind of thing that is going on up my way, as I mentioned, where the people are being hired into employment schemes and asked to put up money and then find that there are no jobs, or as a matter fact, that the job does not even exist?

Mr. NELSON. Yes; we have had several cases like that.

Senator STEVENS. I think in a period of high unemployment that this is the cruelest thing a person could do.

Well, I appreciate your testimony. I appreciate the fact that we have got this bill now to a point where we all can support it wholeheartedly. You do not have any reservations about it, I take it?

Mr. NELSON. None whatsoever.

Senator STEVENS. How about you, Mr. Davis? Do you have any reservations about this bill?

Mr. DAVIS. No, sir, I do not.

Senator STEVENS. Good. Well, we appreciate it very much, gentlemen.

Thank you. We look forward to giving you the bill as quickly as we can.

[Mr. Nelson's prepared statement follows:]

STATEMENT OF CHARLES P. NELSON
BEFORE THE GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON
CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES
ON S. 450
March 2, 1983

Mr. Chairman my name is Charles P. Nelson, and I am the Assistant Chief Postal Inspector for Criminal Investigations. I am accompanied by Mr. George C. Davis, Assistant General Counsel, Consumer Protection Division, Postal Service Law Department.

The Postal Service supports S. 450. The bill is very similar in content to S. 1407, as passed by the House on December 13, 1982. A somewhat more extensive version of S. 1407 was passed by the Senate on May 19, 1982. That bill, unlike S. 450 and the House-passed version of S. 1407 contained a provision which would have authorized the issuance of administrative civil investigative demands to inspect records relating to suspected false advertising.

Over a century ago, Congressional concern to protect the public from marketing schemes conducted by mail -- where the prospective purchaser has little opportunity to conduct a pre-purchase inspection of matter offered for sale -- led to the enactment of the criminal mail fraud statute (18 U.S.C. § 1341) and the civil false representation statute (39 U.S.C. § 3005).

As direct mail marketing has grown, a small segment of the industry which fails to adhere to the high standards of candor and honesty followed by the industry as a whole has, regrettably, also grown. Consequently, these consumer protection statutes are, perhaps, more important today than in the past.

Not only has the number of cases involving deceptive mail marketing increased over the years but so also has the sophistication of many deceptive mail order promotions. The civil false representation statute in particular is becoming increasingly subject to evasive tactics by such promoters. S. 450 is intended to prevent such evasion.

The statute has a very simple mandate -- that persons selling goods or services by mail refrain from the use of advertising which will mislead prospective purchasers in any material respect. Unlike the criminal mail fraud statute, its purpose is not to punish intentional deception. Rather, its purpose is to preclude consumer losses caused by misrepresentation, whether or not deception was intended.

The principal sanction authorized by the statute is an administrative "mail stop order" which seeks to prevent the consumer's money from reaching the operator of the scheme by requiring its return to the sender. The underlying expectation is that if the operator of the scheme is cut off from his profits, he must either reform his promotion to avoid misrepresentation or cease marketing his product by mail. This expectation is often not realized.

The proceedings which may lead to these orders are conducted pursuant to the Administrative Procedure Act (5 U.S.C. Chs. 5 and 7). A formal complaint is filed with the Postal Service's Judicial Officer. A copy of the complaint, a notice of hearing and our rules of practice are served on the promoter -- called the "respondent" in our cases. The complaint is assigned to an Adminis-

trative Law Judge who presides over a formal evidentiary hearing where the respondent may be represented by counsel, present testimony, and cross-examine our witnesses. The Administrative Law Judge renders an "Initial Decision" which recommends, or not, the issuance of a mail stop order. The entire record, including a transcript of the hearing, is reviewed by the Judicial Officer. If he concludes that the Postal Service has proven by a preponderance of the evidence that the statute is being violated, he will then issue a mail stop order. If he does so, the respondent may seek judicial review of that decision in a federal district court.

In practice, however, approximately half of our cases do not follow this entire course of litigation but are informally settled through consent agreements in which the respondent agrees to discontinue misrepresentation of his product or service.

Regrettably, the protection intended by the statute can readily be frustrated. S. 450 would deal with these deficiencies by enacting two major changes in the present statute.

First, the bill would authorize the Postal Service to obtain, upon tender of the advertised price, any article or service being offered for sale by mail. An unreasonable failure, as determined by a United States district court, to provide the article or service could be considered, for purposes of 39 U.S.C. § 3007, in determining whether probable cause exists to believe that section 3005 is being violated. Upon such a determination the court may order the Postal Service to temporarily detain the

respondent's mail pending completion of Section 3005 proceedings. The purpose of this provision is to counter a practice whereby unscrupulous promoters, by means of false advertising, induce people to send orders for items that are not as advertised and then postpone filling the orders until after the advertising has run its course or, in some cases, forever. Proceedings under section 3005 typically turn on a showing by the Postal Service of a significant discrepancy between what is stated in an advertisement and what is actually offered for sale. To show this discrepancy, the Postal Service generally must be able to obtain a sample of what is offered for sale. The longer a promoter may keep us from obtaining a sample of his product, the longer we must defer our proceedings and the less mail will ultimately be "stopped" if a mail stop order is issued. In our experience the time required to obtain the product often exceeds one month. The bill would reduce this source of delay by making the advertiser's unreasonable failure to sell us the advertised product or service a sufficient ground for a federal court, in its discretion, to take injunctive action under section 3007. Under Rule 65 of the Federal Rules of Civil Procedure, the courts are required to attempt to give notice to the defendant before issuing a temporary restraining order, which may last only ten days unless extended for 10 additional days, and are required to provide notice before issuing a preliminary injunction which, in these cases, normally extends until termination of the administrative proceedings.

Second, the bill would remedy a weakness in the existing law resulting from the fact that it has little or no deterrent effect. The mail stop order that may eventuate from a current section 3005 proceeding is directed at blocking remittances responding to a particular false advertisement using a particular trade name and/or address. Only mail so addressed is affected. So far as the current statute is concerned, a promoter who wishes to continue the same false advertising scheme need only change his trade name and/or address and thereby escape the consequences of the outstanding mail stop order until we can complete additional administrative proceedings. It is common for promoters to repeatedly employ this tactic and in each case the public is injured in the interim between the resumption of the scheme and our completion of additional proceedings.

A few examples may help to illustrate this point: A Chicago-based promoter peddled phony aphrodisiacs by mail using many different trade names and addresses to evade 25 administrative actions. After each action, he simply moved on to new addresses establishing the same promotion under different names; three promoters whose sales of so-called "look-alike" drugs through the mails were the subject of mail stop orders, promptly re-established their operations under new names and addresses; a Chicago operator of a phony vacation package promotion re-established the same scheme in Las Vegas, using a new name, following district court proceedings under 39 U.S.C. § 3007 which resulted in a consent order intended to terminate the scheme; a multi-million dollar promotion of phony hair growth

potions, following proceedings against its Atlanta-based operator, adopted new trade names, moved to Florida and continued the scheme; and, an operator of an envelope stuffing scheme in San Antonio was the subject of three separate Section 3005 proceedings involving altered names and addresses.

S. 450 would allow the Postal Service to order the promoter to cease and desist from continuing the scheme and would authorize the federal courts to impose a civil penalty upon those who violate the order. The effect of the proposed cease and desist order is to put the respondent on fair, advance notice that his resumption of the scheme could result in the imposition of a penalty. The order authorized by the current statute places no direct obligation at all on a respondent -- it is directed only to a postmaster.

The bill does not authorize any additional regulation of activities in the private sector or impose any new recordkeeping or reporting requirements on any segment of the public. It does not authorize the Postal Service to impose any additional sanction or penalty. All provisions of the bill providing new sanctions or penalties vest that authority in the federal courts. It does not necessitate an expansion of the resources devoted to enforcement of Section 3005 by the Postal Service. We believe the bill is a carefully limited measure to fill in what experience has shown to be important omissions that have impaired the effectiveness of the false representations statute while avoiding the expansion of administrative powers.

We believe the bill also succeeds in defusing various concerns raised in the hearings on S. 1407. As noted above, a controversial provision which would have allowed an issuance of civil investigative demands has been deleted. Also responding to concerns raised in the House hearings, the bill contains a provision designed to limit the applicability of 39 U.S.C. § 3005 to advertisements for books and other publications. The so-called "Mirror Image" provision, which would be enacted as subsection 2(b) of 39 U.S.C. § 3005, appears to strike a workable balance between the desirability of preventing the sale of printed matter by mail through false advertising and the individual's right, guaranteed by the First Amendment, to be free to market his ideas, no matter how unpopular or invalid they may be.

Although the First Amendment narrowly limits our authority to proceed against false and deceptive advertising of publications, the proscription is by no means absolute. Clearly, the opinions or ideas of an author are entitled to absolute protection from government interference, and their truth or falsity is not at issue in our cases. As long as there is no material discrepancy between what is advertised and what is delivered, Section 3005 is not applicable.

The concern of Section 3005 is "...a scheme or device for obtaining money or property through the mail by means of false representations...." Typically the "false representation" is in a product's advertising. Accordingly, our proceedings do

not seek to prohibit the dissemination of false ideas but only of false advertising.

The Supreme Court has held that the regulation of deceptive commercial advertising is not proscribed by the First Amendment. 1/ And, in the case law that has evolved in Section 3005 cases, no distinction is drawn between advertising that falsely describes publications and advertising that falsely describes other products. 2/

Accordingly, our administrative cases have held that if an advertisement for a written product falsely promises the results that can be achieved by following the procedures described in a publication, Section 3005 has been violated. To date, none of the challenges to our position have been sustained by the courts. In no case has a court found that our action violated the First Amendment.

Advertising for products which consist in whole or in part of written matter -- such as pamphlets, diagrams, memoranda -- have been involved in many of our cases. For example, in the typical work-at-home scheme, the product consists of a memorandum or pamphlet telling the buyer how to operate a similar scheme.

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1/ See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 770-771 (1976).

2/ See Hollywood House International, Inc. v. Klassen, 508 F.2d 1276 (9th Cir. 1974).

The Supreme Court recently denied certiorari in a criminal mail fraud case where the Fifth Circuit court of appeals held that the First Amendment did not bar prosecution of the promoter of a work-at-home scheme.[3/]

Our cases involving publications invariably involve a material disparity between the results the advertisement promises will be revealed and the results that are, in fact, achievable. Our recent cases, for example, have involved advertisements which falsely promised to provide:

- plans for building an automobile carburetor that will yield 200 miles per gallon;
- a method of obtaining operable government surplus jeeps for under $200;
- a method allowing anyone to obtain $500 and a free automobile from the Government;
- an allegedly scientific method of clearing the body's arterial system of accumulated plaque through diet;
- a method of obtaining high-salaried employment in Alaska;
- a method of picking winning race horses.

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3/ Tage v. U.S., 663 F.2d 105 (5th Cir. 1981), cert. denied, 455 U.S. 991 (1982).

We do not believe the proposed "Mirror Image" provision, had it previously been enacted, would have prevented use of Section 3005 in any of these cases. Its enactment will, however, provide guidance to postal investigators, Administrative Law Judges and the courts and serve as a reminder of the limited, Constitutionally acceptable, province for administrative action against advertising of this type.

In conclusion, I would respectfully suggest that the American public widely believes that it has a significant measure of protection against fraud and deception when using the mail system to purchase merchandise or services, to make investments, or to seek employment. Sections 3005 and 3007 are among the important guarantors of that protection. And they are effective when not undermined through the exploitation of loopholes.

In recent years these statutes have been enforced with positive effect against a wide range of false advertising, including advertising for drug products that closely resemble well-known amphetamines and other controlled substances; advertising which purports to offer, and to pay handsomely for, simple at-home work that appeals to older citizens, the disabled, and the recently out-of-work; ads of multi-million dollar enterprises promising pills or potions that will overcome genetic baldness, rejuvenate cells, improve memory or intelligence, and rid the body of "cell-destroying free radicals"; schemes directed to businesses, schools, banks, and law firms falsely billing the victims for photocopy supplies, cleaning

chemicals, light bulbs, promotional supplies, and advertising space in non-existent or falsely described directories.

For over one hundred years, the Postal Service and the Post Office Department have been responsible for enforcement of the false representations statute, and Postal Service investigators and attorneys have developed substantial experience and skill in making the false representations statute work. This responsibility is fairly assigned to the Postal Service. If false advertising were prevalent in the mails, public confidence in direct mail marketing would suffer with consequent inroads into mail volume. The national postal system runs on volume.

We believe S. 450 would provide positive assistance in allowing the Postal Service more effectively to carry out the purpose of the statute, and we recommend that it be given favorable consideration by this Committee.

Senator STEVENS. We are now going to call for a panel of Mr. Volner, counsel to the Association of American Publishers; Richard Barton, vice president for Governmental Affairs of Direct Marketing Association; and Robert J. Brinkmann, general counsel of the National Newspaper Association.

Good morning, gentlemen. Do you all have statements?

Mr. VOLNER. Yes, sir.

Mr. BARTON. Yes, sir.

Mr. BRINKMANN. Yes, sir.

Senator STEVENS. I did not make up the list, but you may proceed in the order it is printed, how is that?

Mr. Volner, that would make you first.

Mr. VOLNER. Thank you, Mr. Chairman.

Senator STEVENS. I understand you are a friend of my first administrative assistant?

Mr. VOLNER. Yes, indeed an old and dear friend.

Senator STEVENS. He asked me to give you a warm welcome. Consider yourself welcome.

Mr. VOLNER. Thank you, and give my regards to him, as well.

**TESTIMONY OF IAN D. VOLNER, COUNSEL TO THE ASSOCIATION OF AMERICAN PUBLISHERS, ACCOMPANIED BY RICHARD N. SCHMIDT, JR., SENIOR COUNSEL, AAP; AND RICHARD A. BARTON, VICE PRESIDENT FOR GOVERNMENTAL AFFAIRS, DIRECT MARKETING ASSOCIATION; AND ROBERT J. BRINKMANN, GENERAL COUNSEL, NATIONAL NEWSPAPER ASSOCIATION**

Mr. VOLNER. Mr. Chairman, I will be very brief, because the AAP is in sympathy with this bill and believes it achieves its fundamental objectives.

My name is Ian Volner, and I am here on behalf of the Association of American Publishers. With me is Richard N. Schmidt, Jr., who is senior counsel for the association.

Mr. Schmidt and I practice with the law firm of Cohn & Marks here in Washington.

The AAP is the principal trade representative of the book publishing industry in the United States. On behalf of the association, we thank you for the opportunity to comment on the important legislation now before you. As I stated, Mr. Chairman, we are in sympathy with the goals of S. 450. The evidence presented in the last session of Congress compellingly demonstrates the need to more effectively curb the use of the mails for fraudulent, illegal and all too often dangerous schemes, schemes which prey particularly upon the elderly, the undereducated and the unwary. At the same time, there is a need for procedural and judicial safeguards to assure that any new powers accorded to the Postal Service are not abused and that the innocent are protected. We share the view of the Direct Marketing Association and others that the language of S. 450 effectively balances these paralegal considerations.

Our particular interest is in section 2(b) of S. 450. That section codifies the mirror image doctrine by providing that advertisements for books and other publications are not subject to the mail fraud statutes if the advertisement accurately depicts the contents of the publication, properly documents any statements about the publication, and the publication and the advertisement are not designed to promote the sale of some other product or scheme.

The provision rests upon the principle, derived from the First Amendment to our Constitution, that if an advertisement merely mirrors the book or publication itself, then neither the advertisement nor, obviously, the publication should be subject to suppression by the Postal Service.

We have a vital interest in this principle, Mr. Chairman.

The Supreme Court has recognized that there is no such thing as a false idea under the First Amendment; that today's informed opinion very often turns out to be tomorrow's quaint, amusing, or not too amusing falsehood. Neither the Postal Service nor any governmental agency should be put in the business of passing upon the truth or falsity of books or other publications. I want to emphasize that we take that position regardless of the content of the book.

If the book describes a health scheme or regimen to be followed, it is a book; it is protected.

Where, however, the book advocates a product or service and the two are tied together, then, under the language of S. 450, section 2(b), it would not be protected, and that is as it should be.

The fundamental point, however, is that the only valid test of truth is "the power of the thought to get itself accepted in the competition of the market," as Mr. Justice Holmes once said.

We believe these principles are codified in section 2(b).

The language of section 2(b) is identical to the formulation of the mirror image doctrine contained in H.R. 7044 and which passed the House of Representatives last session by a large majority. The provision is the result of discussions and an exchange of ideas between the Postal Service, the AAP and others, and we believe that there is consensus that section 2(b) is properly framed to achieve its important protections and goals.

We believe that the codification of the mirror image doctrine, Mr. Chairman, is an indispensable safeguard to the enforcement powers granted by this legislation. Codification of the mirror image doctrine will not, in any measure, curtail the legitimate mail fraud enforcement activities of the Postal Service against nefarious products and schemes. It protects ideas. It will protect publishers and the Postal Service by giving them clear guidelines as to the exercise of enforcement powers, which they are being given.

Above all, and most importantly, it assures that the Postal Service will not ban books and other legitimate publications.

For these reasons, Mr. Chairman, we fully support S. 450 and urge its early passage. The hearings of the last session of Congress showed a need for this legislation. The legislation is properly drafted to be responsive to those needs.

It provides the proper procedural safeguards, and through section 2(b), it provides protection and continued assurance of the free and unfettered flow of information and ideas.

The bill does deserve your prompt and early and favorable action.

Thank you very much.

Senator STEVENS. Mr. Barton?

Mr. BARTON. Mr. Chairman, Direct Marketing Association is a 67-year-old trade association with almost 2,900 corporations dealing in all phases of direct marketing. We come here to endorse S. 450 and to compliment this committee, and also the House Post Office Committee on the excellent work they have done in putting this bill together.

Direct Marketing Association has deep interest in the ethical practices of the industry. To indicate this, we have not one, but two Ethics Committees: One which establishes policies and guidelines and the other which actually acts on cases of alleged unethical behavior. We feel that the ethical practices of the industry are extremely important, and we want to maintain them.

When S. 1407 and H.R. 3973 were introduced in the last Congress, we supported the bill and concept, but we did have some concerns. We were very concerned that the proposed sections of the legislation might give the Postal Service more authority than it needed and give it the ability, in some cases, to harass legitimate direct marketers. I am pleased to say that over the last year and a half, in working with your staff and the staff of the House Commit-

tee, we have come out with a bill that I think provides the dual purpose of protecting the consumer and giving the Postal Service increased authority and at the same time treating direct marketers fairly.

I would just make a few points about some of the aspects about the bill.

First, the bill, of course, gives the Postal Service the very important authority to issue a cease-and-desist order against anyone who is found guilty of false representation.

We believe in this authority. We agreed from the beginning that the Postal Service should have it, and we think that making provisions for the exercise of this authority subject to court review will protect both the consumer and the mailer.

The bill also allows the Postal Service to request immediately an advertiser's sample of the product or services being offered. Currently, as you know, the Postal Service must go through the normal procedures such as sending off or calling in an order just as any consumer. This gives time for an unscrupulous operator to temporize, and, as Mr. Nelson indicated, to move on to another place.

We believe that that is a good provision.

We also agree with dropping the provisions for civil investigative demand.

While the final provisions that were worked out were fairly acceptable to us, I think that the proposal to drop that has probably strengthened the bill and particularly eliminated the possibility of what could be endless litigation which actually could have been destructive to some of the purposes of the bill.

We also agree with the penalties, and we are strongly supportive of the new provisions in the bill which authorize only the court to levy the penalties and not the Postal Service, itself.

We agree with Mr. Volner that a very important addition to this bill, and a very important protection, particularly for books, is the application of the mirror image doctrine to false representation cases.

Finally, I would like to comment, too, that the bill, we think wisely, requires regular reports to Congress about the implementation of this law and also requires the Postmaster General to establish a broad-based consumer educational program.

We at DMA are experienced with consumer education programs. We have developed one with the Federal Trade Commission, and we have already talked with Postal Service officials about helping them work with a consumer education program, and we think that is a very good thing to do.

Again, I would like to commend the members of this committee and the staff, both the House and Senate, for working very diligently on this bill, and it is a good piece of legislation.

Senator STEVENS. Thank you very much, Mr. Barton.

Mr. Brinkmann?

Mr. BRINKMANN. Good morning, Mr. Chairman.

I am Robert Brinkmann, general counsel for the National Newspaper Association. We appreciate this opportunity to testify this morning on S. 450, the Mail Order Consumer Protection Amendments of 1983.

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The members of the National Newspaper Association are weekly and daily community newspapers throughout the country.

As such, they are really placed in the position of being the middleman between the consumer and some of these direct mail marketing schemes which are advertised through their newspapers.

We certainly support the principles of S. 450, but realizing that it expands the powers of the Postal Service, we feel that such efforts must be done very cautiously, very carefully, and with proper respect for third parties. For this reason, we are very pleased to note that this year's bill does not contain the civil subpoena power that was contained in last year's bill.

We do have several suggestions about the language of this year's bill.

First, while we realize the intent of the committee is that these cease-and-desist orders will be issued only with proper notice and a full hearing, we realize that nowhere in the bill, or in section 3005 is this specifically spelled out.

Since this bill greatly expands the powers of the Postal Service, even if notice and hearing are required by other sections of the code, we feel it would be appropriate if this section of the code actually contained those provisions.

It would be a legislative—it would indicate, I think, to the Postal Service that this committee realizes the seriousness of granting the Postal Service these powers and would demonstrate a clear intent that these powers should be exercised only after proper notice and procedure.

Senator STEVENS. If we did that, this bill would go to the Judiciary Committees in both the House and the Senate, and it would be on a much slower track, Mr. Brinkmann. It seems to me those provisions are in existing law already, and since the Postal Service has to go to court, it is up to the judiciaries to determine what procedures will be followed in that judicial approach by the Postal Service for exercise to the courts the powers under the statute.

We could be deemed to be amending or somehow or another leaving out references to other portions of the code, which might be equally protective of the rights of individuals.

I don't think we could possibly put into this bill all of the procedural protections that are involved in judicial process under the United States Code.

I would hope that you would not really insist on that. I think the problems of that judicial process and the review by the Judiciary Committees, they just, I think, would—if we are going to mention any one of the sections, I think they would insist that we would have to mention them all, and I think that would be an unfortunate problem.

Mr. BRINKMANN. Perhaps our concern can be taken care of, then, by proper report language that stresses the seriousness of what this committee is doing and emphasizes that it is clearly intended to take place only after the proper notice and hearing procedures.

Senator STEVENS. We will be happy to do that. I will ask my staff to see that it is as strong as you would like to see it.

Mr. BRINKMANN. Also, with regard to report language, we feel it should be made crystal clear that these cease-and-desist orders are not to be issued against newspapers and other publications unless

those publications are directly implicated in the actual fraudulent scheme. I am thinking of the scenario——

Senator STEVENS. I understand that, and we agree with that. I don't think there is any question about that.

Mr. BRINKMANN. The third point I would like to make and the last point, I think, concerns the mirror image doctrine. We are very pleased to see that this bill contains a codification of this doctrine. We are a bit concerned with some language in the bill—where the bill says "and contains no material misrepresentations of fact."

We feel that it should be made very clear in the report language that this is not meant to reach unpopular opinion or theory, realizing that the difference between a fact and a theory at times can be very close, and some postal inspectors may mischaracterize an unpopular theory or opinion as a misrepresentation of fact.

Senator STEVENS. Yes.

I am sure that is going to be a difficult problem, but, again, that is why the reference to the courts is provided, to assure that that will not happen. But we would be happy to take care of that also and make it very plain in the report that we are not seeking to censure the media that is advertising the scheme.

Mr. BRINKMANN. Mr. Chairman, thank you for considering our comments.

Senator STEVENS. I appreciate that. They are very substantive comments, and we appreciate your cooperation.

Gentlemen, I do appreciate your presentations, and we hope we will have this bill out quickly.

Thank you.

[The prepared statements of Messrs. Volner, Barton, and Brinkmann follow:]

PREPARED STATEMENT OF IAN D. VOLNER

Mr. Chairman, my name is Ian D. Volner, and I am here today as counsel for the Association of American Publishers, Inc. With me today is Richard M. Schmidt, Jr. who is Senior Counsel to the Association. Mr. Schmidt and I practice with the law firm of Cohn and Marks here in Washington. The AAP is the principal trade representative of the book publishing industry. Its members include over 320 publishing organizations—trade book houses, both large and small, school and college textbook publishers, university presses, book clubs, and the publishing departments of various religious denominations. On behalf of the AAP, I wish to thank the Subcommittee for the opportunity to comment on the important legislation now pending before you.

Mr. Chairman, the AAP supports and endorses S. 450. The AAP is in sympathy with the goals of S. 450. The evidence presented in hearings on predecessor legislation in the last session of Congress compellingly demonstrates the need for legislation to more effectively curb the use of the mails for fraudulent, illegal, and all too often dangerous schemes which prey upon the elderly, the uneducated, and the unwary. At the same time, there is a need for procedural and judicial safeguards to assure that any new powers accorded to the Postal Service are not abused and that the innocent are protected. We share the view of the Direct Marketing Association and others that the language of S. 450 effectively and appropriately addresses these parallel considerations.

The AAP has a particular interest in Section 2(b) of S. 450. That section codifies the mirror image doctrine, by providing that advertisements for books and other publications are not subject to the mail fraud statutes if (i) the advertisement accurately depicts the contents of the publication, (ii) the advertisement properly documents any statements about the publication, and (iii) the publication and the advertisement are not designed to promote the sale of some other product. The provision rests upon the principle, derived from the First Amendment to the United States

Constitution, that if an advertisement merely mirrors the book or publication, then neither the advertisement nor the publication should be subject to suppression by the Postal Service.

As the principal representative of the book publishing industry, the AAP has a vital interest in assuring the free and unfettered flow of information and ideas. The Supreme Court has recognized that there is no such thing as a false idea under the First Amendment; that today's "informed opinion" is often tomorrow's quaint, amusing—or not so amusing—falsehood. Neither the Postal Service nor a governmental agency should be put in the business of passing upon the truth or falsity of books and other publications. As Mr. Justice Holmes once said, the only valid test of truth "is the power of the thought to get itself accepted in the competition of the market." These principals are codified in Section 2(b).

The language of Section 2(b) is identical to the formulation of the mirror image doctrine contained in H.R. 7044 which passed the House of Representatives by a large majority late in the last session of Congress. The provision is the result of discussions and an exchange of ideas between representatives of the Postal Service and the AAP and other interested organizations. We believe that there is, thus, a broad consensus among all interested parties that Section 2(b) is properly framed to achieve its important goals.

Mr. Chairman, in the AAP's view, the codification of the mirror image doctrine in S. 450 is an indispensable safeguard to the enforcement powers granted to the Postal Service by this legislation. Codification of the mirror image doctrine will not, in any measure, curtail the legitimate mail fraud enforcement activities of the Postal Service against nefarious products and schemes. It will provide both publishers and the Postal Service with clear and unmistakable guidelines applicable to the exercise of those law enforcement powers. Above all, it assures that the Postal Service will not "ban" books and other legitimate publications.

For these reasons, Mr. Chairman, we fully support S. 450 and urge its early passage. The hearings in the last session of Congress clearly established the need for this remedial legislation. The legislation is properly drafted to be responsive to that need. It provides proper procedural safeguards. Through Section 2(b) it provides protection and continued assurance of the free and unfettered flow of information and ideas. S. 450 serves the best interests of the American public. The bill thus deserves prompt and favorable action.

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PREPARED STATEMENT OF RICHARD A. BARTON

Mr. Chairman, the Direct Marketing Association appreciates the opportunity to testify on S. 450, The Mail Order Consumer Protection Amendment of 1983. The bill is designed to provide some extra authority to the United States Postal Service to investigate possible causes of false or misleading advertising for mail order products. In our opinion, S. 450 provides an important extra measure of protection for the consumer while protecting legitimate direct marketers from arbitrary and unreasonable actions by the Postal Service.

The Direct Marketing Association supports the bill as presently written.

DMA'S CONCERN WITH ETHICAL ACTIVITIES

The Direct Marketing Association (which recently changed its name from the Direct Mail Marketing Association) is an international trade association with about 2,900 corporate members. We represent all phases of direct marketing; however, direct marketing mail is the most significant segment of our industry. Thus, we are profoundly interested in regulations which affect the ability of our members to advertise their products and services. Just as significantly, we are vitally interested in promoting and maintaining high standards of ethics in the mail order industry.

DMA has developed a comprehensive set of ethical guidelines for all forms of direct response marketing, including mail order. DMA also offers its Mail Preference Service which provides consumers the opportunity to have their names removed from mailing lists if they wish to stop receiving unsolicited advertisements. The association promotes this service in major national magazines and newspapers and on radio and television stations.

DMA's Mail Order Action Line is the consumer complaint resolution mechanism that the Association has established for the benefit of the direct response industry. Most of the consumer complaints are resolved by DMA's contacting the company involved and requesting appropriate action and response.

DMA also has a fully-staffed, professional Ethics Department. It is headed by a Director of Ethical Practices who is responsible for providing liaison with the Postal

Inspection Service, the Federal Trade Commission, the Council of Better Business Bureaus and other agencies and consumer organizations that are intimately involved in terminating the use of false representations in direct response marketing. The Director conducts preliminary investigations of alleged unethical practices and uses his offices to attempt to resolve complaints before they are formally submitted to DMA's Committee on Ethical Practices.

This DMA Committee consists of 15 DMA members and meets approximately eight times a year. Its main function is to investigate and attempt to resolve persistent and repeated complaints that cannot be immediately satisfied by DMA's staff. Where a legal, as well as ethical, violation occurs and cannot be resolved, the Committee reflects its entire investigatory file to the appropriate governmental agency, typically the Federal Trade Commission or Postal Inspection Service.

Within the last two years, DMA has established a second committee in this area, the Ethics Policy Committee consisting of seven members who meet six times a year. This Committee develops general ethical practices for the Association and for the industry at large.

Recently, DMA has co-sponsored with the Federal Trade Commission a consumer education program featuring guidelines for shopping by mail which include warnings against specific unethical practices, and a list of "legal rights" in mail order transactions. A pamphlet, "Make Knowledge Your Partner in Mail Order Shopping," has been published and is available on request.

The above are only some of the activities that DMA undertakes in its efforts to promote ethical business practices in the direct response marketing area. DMA would be pleased to provide additional information on these programs and activities.

GENERAL COMMENTS ON S. 450

When S. 1407 and H.R. 3973 were introduced in the 97th Congress, DMA supported them in concept. However, we were very concerned that several provisions of the proposed legislation could give a license to the Postal Service to harass unfairly many legitimate direct marketers. The testimony as presented to this subcommittee, and to the House of Representatives Committee on Post Office and Civil Service is attached to this statement for your information. The testimony outlines our recommendations for changes in those bills. Briefly, we believed that the initial provisions placed too much power in the hands of the Postal Service with little or no control by the courts. We were concerned that enhanced police power in the wrong hands could be used to harass many legitimate businesses unnecessarily.

However, after more than a year of testimony and work with the House, the Senate and the Postal Service, the result has been a bill which can serve all interests well. It gives the Postal Service the power it needs to move with greater speed and effectiveness. At the same time, court procedures have been built which should protect against arbitrary use of power. This vastly improved bill was reintroduced as H.R. 7044 and passed the House of Representatives. The Senate, however, did not complete action before adjournment.

S. 450 is similar to H.R. 7044, and has six major provisions:

1. The bill gives the Postal Service the authority to issue a "cease and desist" order against anyone who is found guilty of false representation. Currently, the Postal Service may issue only a "stop mail" order. This new authority can only be excercised after a full hearing before the Administrative Law Judge and is subject to judicial review. A more general cease and desist order will aid the Postal Service in stopping many unscrupulous operators evade stop orders by moving or changing names.

2. The bill also allows the Postal Service to request an advertiser to supply immediately a sample of its product or service. Currently, the Postal Service must order the goods or services through regular channels (mail, telephone, etc.) which can and does give unscrupulous operators the ability to temporize in filling an order. Again, careful provisions have been written into S. 450 to prevent abuse of this new power.

3. S. 450 has dropped the original provision granting the Postal Service the authority to issue civil investigative demands for records and other documents pertaining to suspicion of false representation. This proposal in the original legislation gave DMA great cause for concern. There were very few constraints placed on the exercise of this power and visions of massive and expensive fishing expeditions concerned us. There was a possibility of endless litigation which could actually have been destructive to the original purposes of the bill.

4. The bill also provides penalties of up to $10,000 a day for violations. Only a court can levy the fines, which addresses an objection which DMA had to the origi-

nal bill which gave the Postal Service the authority to levy funds with only limited judicial review.

5. An important addition to the original legislation is the application of the "mirror image" doctrine to false representation cases. This doctrine states that if an advertisement of a book is a fair reflection of the contents of the book, the advertisement is protected by the First Amendment as, of course, is the book itself. In some instances, the Postal Service has issued stop orders against publishers because the contents of the book were not considered acceptable. While such action did not actually stop publication of the book, the effect was the same. The "mirror image" doctrine has been used by the Federal Trade Commission for some time, and its application to the Postal Service is a welcome addition. The First Amendment was designed to allow the free dissemination of ideas regardless of their content. As long as an advertisement reflects accurately the content of a book, that advertisement should not be subject to false representation statutes.

6. Finally, the bill requires regular reports to Congress by the Postal Service detailing the investigative activities under the legislation and requires the development of an extensive consumer education program. We at DMA are experienced with the development of consumer education programs—a prime example of which is our joint program with the Federal Trade Commission mentioned earlier in this testimony. We would be happy to assist both Congress and the Postal Service in developing a comprehensive program.

### CONCLUSION

In conclusion, we would like to commend the members and staff of the House and Senate who worked diligently on this bill. We think it is a good piece of legislation which will help the consumer.

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## COMMENTS BY THE DIRECT MAIL/MARKETING ASSOCIATION INC., SUBMITTED TO THE SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES, COMMITTEE ON GOVERNMENT AFFAIRS, U.S. SENATE, OCTOBER 26, 1981, REGARDING S. 1407

The Direct Mail/Marketing Association (DMMA) submits this testimony to the Subcommittee on Civil Service, Post Office and General Services of the Committee on Government Affairs, U.S. Senate, for use on the occasion of the Subcommittee's review of S. 1407 to amend Title 39, United States Code.

### DESCRIPTION OF DMMA

DMMA, a New York Not-For-Profit Corporation, is the largest and oldest national trade association serving the vast community involved in direct-to-the-consumer marketing and mail advertising. Its membership totals more than 2,600 firms located in 46 states and 36 foreign countries. Members range in size from "Fortune 500" companies to sole practitioners and represent every functional level of industry—manufacturing, wholesale and retail.

The Association provides the means for improved marketing education and information in an effort to help achieve increased knowledge and effectiveness for the industry. It engages in positive efforts to communicate and explain the values of direct marketing to government agencies and other public bodies, and fosters industry-consumer relationships in an attempt to improve the environment in which direct marketers operate.

Founded in 1917, DMMA has consistently maintained an interest in promoting and enforcing ethical practices in the industry. It has developed a comprehensive set of ethical guidelines for all forms of direct response marketing, including mail order. A copy of those guidelines is attached at the end of this testimony.

DMMA also offers its Mail Preference Service which provides consumers the opportunity to have their names removed from mailing lists if they wish to stop receiving unsolicited advertisements. The Association promotes this service in major national magazines and newspapers and on radio and television stations.

DMMA's Mail Order Action Line is the consumer complaint resolution mechanism that the Association has established for the benefit of the direct response industry. Most of the consumer complaints are resolved by DMMA's contacting the company involved and reaching a mutually satisfactory arrangement.

DMMA also has a fully-staffed, professional Ethics Department. It is headed by a Director of Ethical Practices who is responsible for providing liaison with the Postal Inspection Service, the Federal Trade Commission, the Council of Better Business Bureaus and other agencies and consumer organizations that are intimately in-

volved in terminating the use of false representations in direct response marketing. The Director conducts preliminary investigations of alleged unethical practices and uses his offices to attempt to resolve complaints before they are formally submitted to DMMA's Committee on Ethical Business Practices.

DMMA's Ethics Committee consists of fifteen DMMA members and meets approximately eight times a year. Its main function is to investigate and attempt to resolve persistent and repeated complaints that cannot be immediately satisfied by DMMA's staff. Where a legal, as well as ethical, violation occurs, and cannot be resolved, the Committee refers its entire investigatory file to the appropriate governmental agency, typically the Federal Trade Commission or the Postal Inspection Service.

Within the last two years, DMMA has established an Ethics Policy Committee consisting of seven members who meet six times a year. This Committee develops general ethical policies for the Association and for the industry at large.

Recently, DMMA has developed with the Federal Trade Commission a series of consumer guidelines for shopping by mail which include warnings against specific unethical practices, and a list of "legal rights" in mail order transactions. A pamphlet, "Make Knowledge Your Partner in Mail Order Shopping," will be promoted in magazines, newspapers and radio, and will be available on request.

The above are only some of the activities that DMMA undertakes in its effort to promote ethical business practices in the direct response marketing area. DMMA would be pleased to provide additional information on these programs and activities.

SUMMARY OF S. 1407

DMMA supports the general objectives and purposes of S. 1407 and the efforts of the Postal Service to deal with practices that utilize the mail to make false representations in the sale of goods and services. At the same time, DMMA has serious misgivings with regard to the granting of broad powers without legally accepted procedures to serve as safeguards against abuse.

S. 1407 would give the Postal Service subpoena power, the authority to issue a cease and desist order against a person conducting a scheme for obtaining money through the mail by means of false representations and the additional authority to demand any article or service that a person offers for sale by mail. Any person's unreasonable failure to comply with such a demand or a subpoena would constitute probable cause to believe that the law pertaining to false representations has been violated, and would permit the Postal Service to apply to a federal district court for a temporary restraining order or a preliminary injunction directing the detention of that person's incoming mail.

Under the existing statute, which remains in effect, if the Postal Service determines upon satisfactory evidence that a person has, in fact, violated the law, it may issue an order which directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of the law. The mailer, or his representative, must first be notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns it to the consumer.

S. 1407 further provides that any person who evades or attempts to evade the effect of an order issued pursuant ot the section pertaining to false representations and who engages in the conduct which warranted issuance of the order shall be subject to a civil penalty not to exceed $10,000 for each day the violative conduct continues. Any such civil penalty shall be assessed by the Postal Service.

§ 413. INSPECTION AUTHORITY

Were S. 1407 enacted without Postal Service subpoena power, the Postal Service might claim an inability to fulfill its enforcement obligation without the means fully to explore and investigate potential violations. Under those circumstances unnecessary legal procedures might be triggered under § 3005(a) that a prior subpoena and investigation could have helped to avoid. That is, if the Postal Service were granted subpoena power, a subpoenaed person, before litigation, would have an opportunity to demonstrate that he had not violated the law. If he succeeds, presumably no complaint would issue and unnecessary litigation would not ensue. (Since there currently is no requirement that the Postal Service inform a person that he is under investigation, the use of a subpoena would bring a matter into the open in its incipiency and might provide the opportunity to avoid the issuance of a formal complaint.)

Another possible result of granting the Postal Service subpoena power, however, and perhaps the more ominous one, is the potential for misuse, harassment and abuse of process that might follow, with the corresponding disruption of business routine. These two conflicting possibilities should be weighed.

The proposed subpoena authority, if enacted, should be better defined so as to avoid unnecessary legal skirmishes relating to legal sufficiency, undue breadth, proper service, time to oppose, and the like.

By contrast, while the Federal Trade Commission may issue a civil investigative demand upon a person it believes may be in possession of material or information relevant to a legal violation within the meaning of the operative section of the FTC Act, the FTC demand must, among other safeguards, (1) state the "nature of the conduct" constituting the alleged violation under investigation, with reference to the applicable law, (2) describe the documentary material with such "definiteness and certainty" as to permit it to be fairly identified, (3) prescribe a return date or dates which will provide a "reasonable period of time" within which the demanded material may be assembled and made available, (4) identify the custodian to whom such material shall be made available, and (5) be served only in one of the prescribed manners—each designed to assure receipt by the person upon whom the demand is made (e.g., personal service, registered or certified mail, return receipt requested), followed by a verified return by the individual serving the demand.

Beyond that, the FTC provisions set forth the time period within which to oppose a demand, and the procedure to be followed. It also requires a commissioner's signature before a demand may issue, and establishes an elaborate mechanism to maintain the confidentiality of the documents the Commission receives. S. 1407 is deficient in these respects and takes the unnecessary and overreaching step of establishing a statutory presumption of wrongdoing that attaches for unreasonable failure to comply. This will be more fully discussed below. DMMA would endorse the grant of reasonable subpoena power to the Postal Service, if the subpoena power were more clearly circumscribed as it is, for example, with the FTC's civil investigative demand authority, and if the statutory presumption for failure to comply were eliminated.

§ 3005. FALSE REPRESENTATIONS; LOTTERIES

There is little, if any, legal distinction between a Postal Service demand for documents (§ 413) and its demand for an article or service (§ 3005). Of course, in the latter case it will first tender the advertised price before expecting compliance with the demand. Accordingly, our comments with respect to subpoena power apply equally to this second type of demand. Critical here as well, as it was in the subpoena section, is the proposal to construe, by statutory presumption, the unreasonable failure (not refusal) to provide the demanded article or service as the equivalent of probable cause to believe that a false representation violation has occurred. This, then, would per se allow the Postal Service to issue a postal stop order or, as discussed next a cease and desist order. The statute itself would provide the potential for shortcircuiting the due process safeguards of notice and an opportunity to be heard. DMMA opposes the establishment of such a statutory presumption.

The postal laws now permit the Postal Service to issue an order stopping mail that is in response to a scheme or device to obtain money by false representations from being delivered to any person engaged in such an activity. The Service's jurisdiction and control are over the delivery of mail. Under the bill's proposal, the Postal Service would have the power to issue an order requiring a person to cease and desist from engaging in such an activity. This shift in jurisdiction from in rem to in personam is a major expansion of Postal Service power and one that should have a demonstrated acute need and sound basis before enactment.

Moreover, the bill would not limit the cease and desist order to the enjoined person's use of the mail, but would consider as contempt the resumption of the activity if carried out through the use of "any instrumentality of interstate commerce". The Postal Service seems to be overstepping the boundaries of the empowering legislation that authorized its very existence. While perhaps the bill is not inherently legally infirm for that reason, it should be closely scrutinized before such a material extension of Postal Service authority is enacted. DMMA does not feel there is a need for establishing in the Postal Service what would be tantamount to a general law enforcement agency.

§ 3012. CIVIL PENALTIES

DMMA favors the deterrence of fraudulent mail order operators. Assisting the Postal Service to help bring a halt to the use of schemes and devices used by illicit

marketers for obtaining money through the mail by means of false representations has long been and continues to be a primary function of its Ethics Committee. Thus, DMMA could wholeheartedly support legislation that imposes civil penalties upon such wrongdoers.

The one difficulty DMMA has, however, is endorsing legislation that grants the power to assess such penalties to the Postal Service. While endorsing the concept of civil penalties under appropriate circumstances, DMMA seriously questions the need for the authority to do so to reside with the Postal Service rather than with a federal court of competent jurisdiction.

Anyone in privity with a person who evades or attempts to evade the effect of an order and who with actual knowledge of the order engages in conduct which assists in such actual or attempted evasion is also to be subject to a civil penalty not to exceed $10,000 for each day the violative conduct continues. Once again, the Postal Service is empowered to assess any civil penalties.

Although these provisions are conceptually favored by DMMA, it again seriously questions the appropriateness for the assessment to be made by the Postal Service.

Another section of the bill provides for "due process" to be followed in determining the amount of any penalty. DMMA favors this aspect of the legislation and, indeed, could not support a final version which would fail to provide for notice and a fair hearing before penalties were assessed. Subsections (b) (1) and (2) are ones that DMMA fully endorses and believes are necessary to any acceptable legislation in this area.

It should be noted that any decision by the Postal Service to assess a civil penalty, following the notice, proposal and hearing provisions of (b)(1), shall be final unless appealed thirty days from the date the order making the assessment was issued, without any assurance that the person required to pay the penalty actually received the notice.

The appeals procedure of subsection (c) appears to be acceptable, although the finality of a Postal Service decision (to assess) must again be questioned on the need for the Postal Service, rather than a court, to impose a civil penalty.

By its terms, subsection (d) raises another serious issue. It removes the fact finding function from the judiciary and places it with the Postal Service (". . . the validity, amount and appropriateness of such penalty shall not be subject to review."). This shift does not appear to be necessary to the Postal Service's ability to carry out the law effectively. We see no reason why a federal court should not retain the opportunity to review the underlying supportive facts as well as the decision rendered by the Postal Service.

## CONCLUSION

While DMMA endorses the spirit and intention of S. 1407, it cannot fully agree with its letter. DMMA recommends that changes be made to the Bill in accordance with the above comments and the questions raised by them.

Specifically, DMMA recommends that S. 1407 be amended to provide the following:

1. The subpoena power under the new section 413 and the power to demand goods and services under the new section 3005 be subject to more precise definitions, procedures and safeguards.

2. The elimination of provisions under which a failure to submit to a Postal Service subpoena or demand constitute "probable cause" to believe that the false representation laws have been violated. Federal courts should have the authority to enforce a subpoena or demand.

3. If the cease and desist authority were demonstrated to be necessary, such orders should apply only to the use of the mail. S. 1407 extends the authority to use of "any instrumentality of interstate commerce."

4. Civil penalties should be assessed by a federal court and not unilaterally by the Postal Service.

5. Full review authority of the facts as well as the law should remain with a reviewing federal court with respect to assessment of penalties.

Association representatives would be pleased to work with staff in an effort to overcome some of the difficulties DMMA has with the bill in order to arrive at suitable language.

## TESTIMONY OF THE DIRECT MAIL/MARKETING ASSOCIATION, BEFORE THE SUBCOMMITTEE ON POSTAL PERSONNEL AND MODERNIZATION, COMMITTEE ON POST OFFICE AND CIVIL SERVICE, JUNE 3, 1982, REGARDING S. 1407 AND H.R. 3973

DMMA is the largest and oldest national trade association serving the vast community involved in direct-to-the-consumer marketing and mail advertising. Its membership totals more than 2,900 firms located in 46 states and 36 foreign countries. Members range in size from "Fortune 500" companies to sole practitioners, and represent every functional level of industry—manufacturing, wholesale and retail.

The Association provides the means for improved marketing education and information in an effort to help achieve increased knowledge and effectiveness for the industry. It engages in positive efforts to communicate and explain the values of direct marketing to government agencies and other public bodies, and fosters industry-consumer relationships in an attempt to improve the environment in which direct marketers operate.

### DMMA'S CONCERN WITH ETHICAL PRACTICES

Founded in 1917, DMMA has consistently maintained an interest in promoting and enforcing ethical practices in the industry. It has developed a comprehensive set of ethical guidelines for all forms of direct response marketing, including mail order. A copy of those guidelines is attached at the end of this testimony. DMMA also offers its Mail Preference Service which provides consumers the opportunity to have their names removed from mailing lists if they wish to stop receiving unsolicited advertisements. The Association promotes this service in major national magazines and newspapers and on radio and television stations.

DMMA's Mail Order Action Line is the consumer complaint resolution mechanism that the Association has established for the benefit of the direct response industry. Most of the consumer complaints are resolved by DMMA's contacting the company involved and reaching a mutually satisfactory arrangement.

DMMA also has a fully-staffed, professional Ethics Department. It is headed by a Director of Ethical Practices who is responsible for providing liaison with the Postal Inspection Service, the Federal Trade Commission, the Council of Better Business Bureaus and other agencies and consumer organizations that are intimately involved in terminating the use of false representations in direct response marketing. The Director conducts preliminary investigations of alleged unethical practices and uses his offices to attempt to resolve complaints before they are formally submitted to DMMA's Committee on Ethical Business Practices.

This DMMA Committee consists of 15 DMMA members and meets approximately eight times a year. Its main function is to investigate and attempt to resolve persistent and repeated complaints that cannot be immediately satisfied by DMMA's staff. Where a legal, as well as ethical, violation occurs and cannot be resolved, the Committee refers its entire investigatory file to the appropriate governmental agency, typically the Federal Trade Commission or Postal Inspection Service.

Within the last two years, DMMA has established a second committee in this area, the Ethics Policy Committee consisting of seven members who meet six times a year. This Committee develops general ethical practices for the Association and for the industry at large.

Recently, DMMA has co-sponsored with the Federal Trade Commission a consumer education program featuring guidelines for shopping by mail which include warnings against specific unethical practices, and a list of "legal rights" in mail order transactions. A pamphlet, "Make Knowledge Your Partner in Mail Order Shopping," has been published and is available on request.

The above are only some of the activities that DMMA undertakes in its effort to promote ethical business practices in the direct response marketing area. DMMA would be pleased to provide additional information on these programs and activities.

### GENERAL COMMENTS ON S. 1407

DMMA supports the general purposes and objectives of S. 1407. Our deep involvement in promoting ethical practices throughout the industry has led us to support the Postal Service request for enhanced authority to act more quickly and effectively to prevent blatant false representation.

However, it is important that the public need be balanced by a healthy respect for the rights of business engaged in mail order sales. In our opinion, S. 1407 goes somewhat too far in the granting of broad powers without accepted safeguards against the abuse of power.

The version of S. 1407 which passed the Senate and is the subject of your hearings today is a significantly improved version of the original bill. Many of the serious questions we had about the original bill were resolved in markup, and we commend Senator Pryor, Senator Stevens, and their staffs for their workmanlike job.

Rather than detail our comments of the original S. 1407, DMMA will submit its original statement for inclusion in the record of this hearing and concentrate briefly on the bill as it is now written.

SUBPOENA AND INSPECTION AUTHORITY

As we mentioned in our original testimony, properly circumscribed subpoena authority could actually be beneficial to mailers in some cases in that it could lead to a quicker resolution of differences if a mailer is not guilty of false representation.

However, there is a potential for misuse, and we do not believe that this potential has been completely eliminated in the Senate passed version of S. 1407.

Improvements over the original version include the provision that United States District Court, rather than the Postal Service will enforce a subpoena and will determine if there is "probable cause" to believe the statute has been violated, should the subpoena be ignored, and the requirement that the Postal Service publish proposed regulations governing the use of subpoena power for notice and comment.

Nevertheless, we still believe that more careful restrictions of the use of subpoena power by the Postal Service need to be written into the law.

The proposed subpoena authority, if enacted should be better defined so as to avoid unnecessary legal skirmishes relating to legal sufficiency, undue breadth, proper services, time to oppose, and the like.

We would suggest the law governing Federal Trade Commission civil investigative demands as a possible model.

While the Federal Trade Commission may issue a civil investigative demand upon a person it believes may be in possession of material or information relevant to a legal violation within the meaning of the operative section of the FTC Act, the FTC demand must, among other safeguards, (1) state the "nature of the conduct" constituting the alleged violation under investigation, with reference to the applicable law, (2) describe the documentary material with such "definiteness and certainty" as to permit it to be fairly indentified, (3) precribe a return date or dates which will provide a "reasonable period of time" within which the demanded material may be assembled and made available, (4) identify the custodian to whom such material shall be made available, and (5) be served only in one of the prescribed manners—each designed to assure receipt by the person upon whom the demand is made (e.g., personal service, registered or certified mail, return receipt requested), followed by a verified return by the individual who serviced the demand.

Beyond that, the FTC provisions set forth the time period within which to oppose a demand, and the procedure to be followed. It also requires a commissioner's signature before a demand may be issued and establishes an elaborate mechanism to maintain the confidentiality of the documents the Commission receives.

These comments apply equally to the authority to demand a service or product contained in Section 3 of the bill.

EXTENSION OF POSTAL SERVICE POWER

Postal law now permits the Postal Service to issue an order stopping mail that is in reponse to a scheme or device to obtain money by false representations from being delivered to any person engaged in such an activity. The Service's jurisdiction and control are over the delivery of mail. Under the bill's proposal, the Postal Service would have the power to issue an order requiring a person to cease and desist from engaging in such an activity. This shift in jurisdiction from in rem to in personam is a major expansion of Postal Service power and one that should have a demonstrated acute need and sound basis before enactment.

Moreover, the bill would not limit the cease and desist order to the enjoined person's use of the mail, but would consider as contempt the resumption of the activity if carried out through the use of "any instrumentality of interstate commerce". The Postal Service seems to be overstepping the boundaries of the enpowering legislation that authorized its very existence. While perhaps the bill is not inherently legally infirm for that reason, it should be closely scrutinized before such a material extension of Postal Service authority is enacted. DMMA does not feel there is a need for establishing in the Postal Service what would be tantamount to a general law enforcement agency.

CIVIL PENALTIES

We are pleased that the Senate-passed bill removed the authority to level civil penalties from the Postal Service to the courts.

While we do not oppose the concept of civil penalties, we do feel that the penalties suggested are somewhat steep.

MIRROR IMAGE DOCTRINE

DMMA would also like to go on record in support of the testimony offered by the Association of American Publishers in connection with the advertisement of books. The Postal Service is treading on very dangerous ground when it does not agree with the content of the book. The First Amendment was designed to allow the free dissemination of ideas regardless of their content. As long as an advertisement reflects accurately the content of a book that advertisement should not be subject to false representation statutes.

CONCLUSION

DMMA supports the essential thrust of S. 1407 and makes the following suggestions for improvements.

1. The subpoena power under the new section 413 and the power to demand goods and services under the new section 3005 should be subject to more precise definitions, procedures, and safeguards.

2. S. 1407 should apply only to the use of the mail. S. 1407 extends the authority to the use of "any instrumentality of interstate commerce".

3. The amount of the civil penalties should be reduced.

4. Language requiring the Postal Service to abide by the "mirror image" doctrine with regard to advertising for books should be added.

Again, we appreciate the opportunity to testify on this important matter. We offer due services to the committee in helping to resolve any questions in connection with S. 1407 or with ethical practices within the mail order industry.

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PREPARED STATEMENT OF ROBERT J. BRINKMANN

Good morning, Mr. Chairman. The National Newspaper Association appreciates this opportunity to testify on the Mail Order Consumer Protection Amendments of 1983, S. 450. My name is Robert J. Brinkmann, and I am General Counsel to the Association.

The National Newspaper Association is a non-profit trade association representing over 5500 daily and weekly community newspaper throughout the United States. Most of our members deliver a substantial part of their subscriptions through the mails. The members of the association share the concern of this committee, other members of Congress, and American citizens across the country about the various schemes being put forth these days to defraud or mislead postal consumers. We are particularly concerned about the scams that exploit the elderly and the unemployed. We applaud the Postal Service's efforts to combat these unscrupulous practices, and this committee's efforts to see that the Postal Service has the tools it needs to properly do its job.

Of course we do note that the overwhelming majority of advertising and mail order businesses are legitimate and honest ones which play a significant role in the national economy.

NNA is particularly aware of the problems which many of these fraudulent schemes create. All too frequently our members are faced with the question of whether to accept advertisements for enterprises or goods that are of dubious quality or efficiency, if not overtly fraudulent. While recognizing that they have no legal liability for such ads, our members typically feel a high degree of responsibility to their communities and take it upon themselves to evaluate such ads before exercising their absolute right to accept or reject them. These evaluations usually take the form of an inquiry to the local Better Business Bureau or to an appropriate office of a local government.

NNA supports the principles of S. 450. We believe, however, that several points still need further clarification. We certainly do not oppose the concept of strengthening the ability of the Postal Service to deal with fraudulent or openly misleading schemes. But we believe such efforts must be done cautiously, carefully, and with the proper respect for third parties. For this reason, we are pleased that this subcommittee responded to the testimony presented last year by NNA and others and deleted the controversial civil subpoena powers which this bill formerly contained.

It is a better bill for it, since the scope of the powers it gives the Postal Service is now more in line with the Service's mission.

We also have several suggestions.

First, while the intent of this Committee is to allow the Postal Service to issue cease-and-desist orders only after a full adversarial hearing before an Administrative Law Judge, nowhere in this bill or in section 3005 of the postal code are these procedural rights guaranteed. While such procedures may be required under judicial authorities, or other sections of the code, we nevertheless believe that section 3005 should spell out these procedures.

Giving the Postal Service the power to issue cease-and-desist orders is, as you surely realize, not a matter to be taken lightly since it is a significant expansion of the Service's police power, and, as with any expansion of police power, it carries with it an expanded opportunity for governmental abuse. We feel that actually spelling out in Section 3005 the procedures under which this new authority is to be exercised, concurrently with the grant of the authority, would send a clear message to inspection officials that these powers should be exercised with a proper respect for the rights of postal customers. We thus recommend that Section 3005(a) be further modified to read:

(a) After proper notice, and a full evidentiary hearing pursuant to the Administrative Procedures Act, and upon evidence satisfactory to the Postal Service.

Additionally, it should be made crystal clear that the cease-and-desist language of proposed Section 3005(a)(3) is not to apply to innocent publishers who carry any advertisements concerning the scheme. This could be done by report language stating that a cease-and-desist order should be issued against a publication only if the publication were directly implicated in any allegedly fraudulent or misleading scheme, and then only after notice and an evidentiary hearing.

NNA is also pleased to note that S. 450 codifies the mirror image doctrine. We do feel, however, that report language should clarify the meaning of the phrase "and contains no material misrepresentation of fact" found in subsection (A) of the proposed 3005(d)(3).

While we realize that the language is meant to cover such matters as an obvious misrepresentation of a publication's circulation, or a situation where a mail order business has previously and consistently failed to fill orders, the language could nevertheless be construed by some postal inspection official to reach matters of unpopular opinion and theory which the official might construe as a misrepresentation of fact. NNA would urge the committee to clarify, in appropriate report language, that this part of the mirror image test is not intended to encompass unpopular opinions or theories honestly expressed in a publication, even if at odds with "accepted fact." Rather, the report should state that the test is intended to reach advertisements which misrepresent the nature of the publication they are promoting. To protect the First Amendment rights of advertisers and authors, the mirror image test should strictly focus on the veracity of the relationship between the advertising and the publication, rather than the "truth" of the publication's contents.

As Justices Holmes and Brandeis long ago stated:

"When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the foundations of their own good conduct, that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution."—*Abrams* v. *United States,* 250 U.S. 616,630 (1919).

Finally, NNA particularly welcomes the provisions of this bill instructing the Postmaster General to develop and carry out a program designed to provide consumer education to the public concerning mail fraud schemes, including the options open to an individual who receives material which he or she believes may be part of such a scheme. While NNA's members have long been cognizant of the Postal Service's central role in dealing with information, including advertisements, concerning fraudulent use of the mails, many members of the general public do not share this level of awareness. The proposed educational program should go a long way towards changing that situation.

Mr. Chairman, thank you for considering our comments. I will be happy to try and answer any questions you might have.

Senator STEVENS. Mr. Miller, executive director and legislative advocate for the National Health Federation, and Trisha Katson, legislative aide for Liberty Lobby.

**TESTIMONY OF CLINTON RAY MILLER, EXECUTIVE DIRECTOR AND LEGISLATIVE ADVOCATE, NATIONAL HEALTH FEDERATION; AND TRISHA KATSON, LEGISLATIVE AIDE, LIBERTY LOBBY**

Mr. MILLER. Mr. Chairman, I am pleased to appear before you to offer comments from the National Health Federation on S. 450/H.R. 1342.

My name is Clinton Ray Miller. I have represented the National Health Federation for the past 21 years as its legislative advocate. In 1962 we "fathered" and won virtually unanimous congressional approval for the National Health Federation's "Human Guinea Pig Amendment" which for the first time in recorded history prevented any further medical experimentation on humans without their informed consent. This amendment has fundamentally changed the practice of medicine for good not only in the United States but throughout the civilized world.

Shortly after you were elected to your first term, Mr. Chairman, you, sir, were one of the first U.S. Senators to join Senators William Proxmire and Richard Schweiker as a major sponsor and supporter of what has come to be known as the famous "Proxmire/Schweiker," and I might add, "Stevens Vitamin Bill." In June 1976, this bill passed the U.S. Congress without one dissenting vote in either the Senate or the House in spite of the fact that it was bitterly opposed by the U.S. Food and Drug Administration, the American Medical Association, and other powerful multi-billion dollar vested interests.

It was the culmination of a 14-year health freedom battle.

The National Health Federation was the "principal" consumer organization that led and networked this battle against the AMA/FDA attempt to misuse a Federal Governmental agency to regulate most vitamin and mineral supplements as prescription only drugs. NHF was organized 28 years ago to fight for similar health freedom legislation and regulation.

We believe that well-informed, consenting U.S. citizens should be free to choose their own health books, therapies, their doctors, foods, and drugs without improper coercion or censorship from the police arm of the U.S. Postal Service, the Federal Trade Commission, the FDA or any other governmental agency so long as, in the exercise of that freedom, we are not a threat or a hazard to someone else exercising an equal freedom.

We believe that responsible—and we have that word underlined—informed health freedom is as important as religious freedom and political freedom and that all freedoms are closely interrelated and coequal. You can't have one without the other.

Mr. Chairman, we perceive the U.S. Postal Service as having temporarily taken over the No. 1 villian's role from the FDA and the FTC. The "villain" to us is any Federal or State agency which, instead of protecting our health freedoms, works insidiously to destroy them. During the past 3 decades, these three agencies have alternately taken the lead in attempting to get Congress to give them even broader statutory authority to ban unorthodox health books, publications, magazines, products, and ideas from the marketplace.

And they have been incredibly successful.

Mr. Chairman, because we were in such complete agreement with you, sir, in the previous war with the Food and Drug Administration over whether to regulate vitamins as foods or drugs, it was only after the most careful deliberation, following many unsuccessful attempts to reach you through your staff, that NHF decided to oppose S. 450/H.R. 1342 and its predecessor bills, S. 1407, H.R. 3973, and H.R. 7044 in the 97th Congress.

Believe me, Senator Stevens, this is not a comfortable spot for NHF to be in. We would much rather have you as a health freedom ally than as a worthy opponent.

When I told one of my friends of my serious dilemma, he suggested, "Well, either Senator Stevens and his staff have gone blind, or you and NHF have become paranoid."

Now, Senator Stevens, perhaps there are some other alternative explanations for our position on this bill, but I am perfectly willing to concede the possibility that I may have at least overreacted as Henry R. Hoke, Jr., publisher of "Direct Marketing," suggested to me in his letter of May 24, 1982. At this point, I respectfully request that his letter and my response be included in the record as part of my testimony. I will refer you to exhibits 1, 1a and 1b.

Will our exhibits be included in the record of the hearings?

Senator STEVENS. Yes, sir. I just looked at them.

Mr. MILLER. This brings us to S. 450/H.R. 1342 with you, sir, Senators Pryor, Heinz, and Glenn and your most competent and helpful staffs on public record as firmly in favor of it and NHF foursquare against it.

You are most certainly not alone in your position, sir, nor are we. We are both aware that the House passed H.R. 7044, a nearly identical version of S. 450, by an overwhelming 320 to 61 in the lameduck session late last year.

The only full Senate vote so far was a unanimous resolution last May in favor of the bill, giving the USPS far broader subpena powers than in H.R. 7044. The Senate vote followed a 3-0 vote from this subcommittee and a 14-0 vote from the full committee.

Under the circumstances, it is a miracle that Senator James McClure was able to use what Senator Pryor called a "desk filibuster" on the bill to keep it from coming up for a final vote in the final moments of the final hour of last year's lameduck session.

History will tell whether or not Mr. McClure is one of America's greatest health freedom statesmen.

The question now is not whether the proponents of the bill would win if a vote were to be taken tomorrow, because the facts seem to indicate they would. If you, sir, are able to bring it to a vote within a month, I fear the bill will pass.

With all due respect, however, we predict that the Senate vote may not be unanimous this time around. We perceive that public opinion is turning against the bill as the citizens of Alaska and every other State become aware of its ramifications and its many potentials for abuse. The momentum has switched and is switching from pro to con.

Please note our exhibit 2, which I respectfully request be included in the record as part of my testimony. It is my rough worksheet analysis of the 320 to 61 House vote. You will note that 25 of the 61

House members who voted against H.R. 7044 on December 13 were previously cosponsors of the much more sweeping H.R. 3973/S. 1407. It is significant that H.R. 7044 was jointly presented to the House as a "clean bill" by first, William D. Ford as chairman of the full Committee on Post Office and Civil Service; second, Claude Pepper as chairman of the House Select Committee on Aging; and third, Mickey Leland as chairman of the House Subcommittee on Postal Personnel and Modernization.

I would like to draw your attention to what I think is an infamous and a contemptible "hit list" of publications which was secretly put together by the Postal Service.

Much of the increasing public, and, I might say, media opposition to any law which will give the USPS far greater police power than it already has stems from the fact that the USPS has misused and abused its existing police powers, and I mean it has grossly misused them.

The full impact of public reaction to the infamous hit list of 149 publications secretly compiled by the U.S. Postal Service will not be felt for many months. Please note our exhibits No. 3, 3a, 3b, and 3c which I respectfully request be included in the record as part of my testimony.

Exhibit 3 is a copy of the USPS hit list, and a single paragraph from the Honorable William E. Dannemeyer's December 9, 1982 House statement from the Congressional Record, pages 5023 to 5026 entitled "The Mail Fraud Bill is a Fraud." And it is exactly that. It was that when it was introduced, and it is that as it is before this committee today.

The hit list is on the back of a form letter we prepared to send to the Wall Street Journal and other publications informing them of their inclusion on the heretofore secret "enemies list."

Exhibit No. 3a and 3b are copies of the replies we received from the Mother Earth News and the Dell/Horoscope.

Exhibit No. 3c is the U.S. Postal Service's Chief Postal Inspector's August 4 refusal to release to me the USPS hit list in response to my July 21 request under the Freedom of Information Act. It wasn't until a member of the House Post Office Subcommittee made a request that they would release this secret document.

Sylvia Porter mentioned the other day, in her widely syndicated columm, it took 11 days for her first-class letter to get from her 8th Street office in New York to her 38th Street office. Instead of delivering the mail promptly, the USPS is now putting fraudulent ads in newspapers to "educate" ignorant readers on how to "stamp out mail fraud" by "real con men."

We would like to draw your attention to the related article in the Arizona Republic-Gazette in my exhibit No. 4.

Part two of my testimony, Mr. Chairman, refers to the four flaws we see in S. 450. If they were removed, we could support the bill.

The first flaw: The last 17 lines of S. 450, beginning with line 19 on page 7, gives far too much propaganda authority without adequate guidelines for the USPS. USPS would be able to carry out a massive nationwide propaganda program of adverse prejudging publicity against any targeted group or industry marketing plan, et cetera, under the pretext that the USPS is—and I use the language of the bill—"providing consumer education to the public."

The bill grants unlimited new statutory authority to use unlimited funds, employees, and Postal Service facilities to carry on a function unrelated to the prompt delivery of the mail.

For example, a sister agency, the U.S. Food and Drug Administration was granted similar authority and carried on a long, bitter and costly unfair nationwide adverse publicity campaign against health food stores and the vitamin industry during the late 1950's, the 1960's and early 1970's to coincide, not accidentally, with their attempt to get FDA regulations passed to regulate vitamins as RX drugs.

Following the word "scheme" on line 7, page 8, we would propose the addition of an amendment as follows:

First amendment: Nothing in this section shall be construed as allowing the USPS or any of its employees to use this authority to generate, develop or conduct any adverse prejudging publicity against any individual, group or business about to be or being prosecuted by the U.S. Postal Service.

The second flaw: The bill authorizes excessive new civil penalties—new civil fines as penalties to be increased by more than 700,000 percent. The bill authorizes exorbitant—and I do mean exorbitant—civil fines of $7 million per year, which are more than 7,000 times higher than the USPS criminal fines now authorized under the USPS Act.

The present maximum civil penalty and the maximum civil fine which has been authorized by Congress ever since Benjamin Franklin first organized the first U.S. Post Office 200 years ago is zero dollars, and zero cents. This is all that it should ever be. Mr. Chairman, and members of this important subcommittee, let's be reasonable.

When inflation or interest gets into double-digit figures, almost all lawmakers recognize it as excessive. What has suddenly happened in America or in the USPS that civil penalties should be increased by the more than 700,000 percent in a single year?

The answer is that the USPS has discovered that not only the present Postmaster General but the majority of Congress and the majority of U.S. citizens do not understand the fundamental difference between the word "civil" and the word "criminal."

The present Postmaster General uses the terms interchangeably.

I might comment at this point, Mr. Chairman, that I was delighted to see in your statement in this hearing you did not misuse the word "fraud" once, but I did notice that in the statements you made for the hearings that were held in Little Rock, Ark., last year that you used the term "fraud" five times in describing this bill.

Perhaps someone on your staff has recognized that there is as wide a difference between "civil" and "criminal" as there is between dioxin and a flyswatter.

This blurring of the terms between "civil" and "criminal" does violence to justice. It makes a mockery of the bill.

Why does the USPS want to use the civil rather than the criminal statutes to prosecute criminals?

You drew our attention to the criminal activity that has been conducted through the mail in Alaska where I lived a couple of years. The USPS should be prosecuting these criminal people under the criminal statute which is title 18, not title 39.

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Those men committed a crime, Mr. Chairman. When the USPS goes after a criminal under title 18, it has a 99-percent conviction rate. The USPS rarely loses a criminal case.

The most obvious reason the USPS wants to prosecute under title 39 is that it is a thousand times easier to prosecute under civil statutes—title 39—than under criminal statutes—title 18. A person who is accused of a violation of a civil statute, with this kind of penalty, has none of the due process protection that is automatically guaranteed a person who is alleged to be guilty of a criminal violation.

Under the criminal statute, title 18, a person alleged to be guilty of fraud or another crime is presumed to be innocent until proven guilty. A very high standard of proof is to be required to win a conviction.

Under a civil statute—title 39—just the reverse is true. The person alleged to be in violation of the statute may be presumed to be guilty. The burden of proof can be quickly and easily shifted to the accused to rebut or prove him or herself innocent. The testimony of one single governmental witness can establish a prima facie case as was done in the *Magnolia Lab* case.

An extremely low standard of proof is required to win a civil conviction. See the *Magnolia Lab* v. *the United States Postal Service.*

Now, the bottom line is that the USPS wants to be given the awesome authority under S. 450/H.R. 1342 to prosecute criminals under civil—title 39—rather than criminal—title 18—statutes.

The key word in criminal prosecution is "intent." Without criminal intent there is no crime.

The hair on my head stood on end when I heard the previous witness say that the USPS has no concern in the administration of this law with whether there is "intent." He testified about an hour ago. Intent makes all the difference in the world. It is not a crime without an intent to hurt or deceive.

The Post Office Department is deliberately blurring the meaning of these two important words, "civil" and "criminal." The Senate should reject the USPS proposal with a resounding "No" that will be heard and remembered for the next 200 years.

The USPS is winning 98 to 99 percent of all its criminal cases brought to trial.

My second proposed amendment, on page 4, starting with line 10 and continuing through to line 5 on page 6, we suggest that you change the title of this section by striking the word "civil" and putting in its place the word "criminal" each of the six times the word civil occurs, page 4, lines 10, 14(s), page 5, lines 3, 13, and 21.

On page 4, line 11, strike the words "Chapter 30 of title 39, United States Code" and put in their place the words "Chapter 18, United States Code, Section 1341."

On page 4, strike all references to "Section 3005(a)(1) or 3005(a)(2)" and "Section 3007(b)" and insert the appropriate sections which will apply to title 18, United States Code, Section 1341.

Explanation: The intent of the second NHF amendment is to make it clear that Congress intends criminals to be prosecuted, fined, and imprisoned under the criminal code, title 18, not under the civil statutes. NHF has no objection to raising the maximum

fines for ciminal, as distinguished from civil, convictions from the present $1000 one-time maximum to the levels proposed in S. 450.

We think that criminals should be vigorously prosecuted. It is because the Postal Service has deliberately refrained from prosecuting criminals as criminals that we have this problem. You will remember that in the USPS testimony, that they went after one operator 25 times. Well, he didn't tell you that after they tried to stop him 25 times under the civil statute, they finally woke up to the fact that they had a criminal statute. They went after him with the criminal code—title 18—and immediately won a conviction.

Now, can you tell me why, in the name of common sense, a U.S. postal inspector with the option of using a powerful weapon like a criminal code would use the civil code to go after a man that keeps changing his post office number? Perhaps it is to deliberately attempt to deceive both the House and the Senate into thinking the USPS is helpless with the present powers that the Congress has given it?

The third flaw is the flawed mirror image doctrine section in S. 450 will give the USPS clear statutory authority to ban health books and magazines and other publications more vigorously and ruthlessly in the future than it has in the past.

The USPS already has Prevention magazine—I think a magazine of about 2 million circulation—on its hit list. Under S. 450, and under precedents of existing case law, the USPS can now ban the entire magazine.

In a previous case, the Federal Trade Commission tried to ban a book published by Rodale Press. It was one of the famous cases that gave rise to the FTC's mirror image doctrine.

To its everlasting discredit, the USPS now boasts about its banned books. This is the list that they now proudly hold out as the scalps on their belt.

I respectfully request that exhibit 5 be included in the record as part of my testimony. It is a partial list of the health books and other publications already banned by the USPS under existing authority.

The so-called mirror image doctrine on page 2 and 3 of S. 450 creates a false image. It is written supposedly to answer the First Amendment concerns the National Health Federation and others raised in the House hearings last year.

The loophole, under (C) page 3, line 1, is larger than the mirror. It shatters not only the mirror but the image and the First Amendment protection of the press.

Now, in our proposed third amendment on page 3, line 1, we suggest placing a period after the word "publication" and strike the balance of the words so that the words "and (C) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme" will be stricken.

The hard facts are that the entire health food movement is built upon just such sale of millions of health books, magazines and other publications to "promote the sale of some other product as part of a commercial scheme."

Now, I personally wouldn't use the word "scheme", but that is the word, I think quite carefully used by the authors of S. 450/H.R.

1342 to imply that anyone who uses a book or a publication to promote the same of some vitamin or exercise device must certainly be engaged in a "plot" or making "devious plans" which are the words Webster associates with the evil sounding word "scheme."

The bottom line is that just last year, the USPS won the *Magnolia Lab* case which has set an incredibly bad precedent. The district court upheld the right of the postal inspectors to ban any health book, magazine or advertisement which advocates new unorthodox ideas or theories.

Now, Mr. Chairman, I brought a copy of this banned booklet "Stale Food vs Fresh Food," for you. If this bill, S. 450, were in effect now, I would be risking a $10,000 daily fine for what I am doing. I would be acting "in privity" with the publisher of this banned book. To its everlasting discredit, the USPS banned it. I hope that there is a public apology not only to Congress but to the author and the people for the banning of this book. I heard the post office witness say today that they intend, under S. 450 and the present law, to go after the ideas in this book. He specifically spelled out that this is the unorthodox theory that the USPS intends to make sure is not advertised or published.

The USPS won the right to ban all publications, printed articles or advertisements which are—and this is the exact language which was upheld by the court which they are so proud of—"unproven and contrary to the weight of informed medical or scientific opinion."

That is in our exhibit 1a we have previously referred to.

The fourth flaw: Three innocent sounding words, "cease and desist", will give the USPS more Orwellian power to permanently shut down any business or profession in the United States than is currently held by the CIA, FBI, IRS, OSHA, FDA, and all other Federal agencies combined.

To understand how the USPS cease and desist orders could be used to close down companies that have never even been accused, much less found guilty of one single crime, one must match the awesome new police powers and fines of S. 450 with a long string of case law precedents recently won by the USPS.

I testified in the House hearings on——

Senator STEVENS. What page are you on now, 13?

Mr. MILLER. I am on page 13.

I testified in the House hearings on S. 1407 and H.R. 7044 on the horrible mistake Congress made in 1967 when a similar bill was before it and it removed a 200-year-old requirement that the USPS had to prove an intent to deceive before it could ban a health book or any other book.

In the 16 years since Congress passed this bad amendment, the USPS has carefully selected and won key case law precedents which will now allow it to do what the FDA and the FTC tried for 30 years to do but failed.

The USPS has been the first Federal agency with congressional approval to play the role of a diet dictator.

The USPS has banned the once famous "Grapefruit Diet" from the U.S. marketplace.

I cannot find or buy a copy of it anyplace. Under S. 450, if Family Circle, Glamour or Ladies Home Journal, which are all, in-

cidentally, on the USPS hit list—see exhibit 3—if they dare to act in privity with the original publisher and republish the now forbidden and banned "Grapefruit Diet" and sell it for 25 cents—which was the rather reasonable price being charged at the time the USPS took the publisher to court to protect the consumer, the publisher would be subject to fines of $20,000 per day or over $7 million a year.

Family Circle, Glamour or Ladies Home Journal, each one then would then be subject to additional fines of $10,000 per day if they dared to act "in privity" with the original publisher of the diet to evade or fail to comply with such a cease and desist or stop order.

See page 3, lines 21 to 25.

Finally, Mr. Chairman, you took a leadership role along with the rest of the U.S. Congress, to prevent the FDA from setting itself up as the diet dictator of the United States back in 1976.

Now, for some reason I cannot yet fathom, you, sir, and Senator Pryor, are the chief sponsors of S. 450, a bill which will give the USPS even more of the same tyrannical authority sought by FDA.

Our final exhibit, exhibit No. 6, consists of two advertisements taken from the National Inquirer for this banned book.

These are very important advertisements. They demonstrate how ridiculous and how indefensible the USPS position is in the precedent-setting *Magnolia* case.

Under S. 450, using one of these ads can subject the publisher to $20,000 fines per day, or more than $7 million per year, for each day the ad runs or he sells a booklet from the ad.

The purpose of this exorbitant fine is, of course, supposed to be "to protect the aged from fraud."

The other ad, according to the USPS, is pristine clean and in no way deceives or defrauds any unsuspecting aged person into buying the same booklet.

I challenge you, sir, or your staff, to tell me which ad is prissy clean and truthful in the eyes of the USPS and which is so grossly fraudulently false and misleading that it has become the USPS' most famous example of "consumer protection."

Remember, sir, in prosecuting Robert Ford for one ad and in giving an OK for the other, the USPS claims it is carrying out the intent of Congress.

Is it?

The fourth proposed amendment on page 2, line 12, is to strike out the words, "cease and desist", and all language relating to it in S. 450.

Mr. Chairman, with the above four major amendments, the National Health Federation could and would support the enactment of S. 450/H.R. 1342.

Thank you, very much.

Senator STEVENS. Ms. Katson, do you want to present your statement?

Ms. KATSON. Thank you, Mr. Chairman.

I am Trisha Katson, legislative aide for Liberty Lobby. I appreciate the opportunity to appear today and present the views of our more than 30,000 member Board of Policy as well as approximately a million readers of our weekly newspaper, the Spotlight. I would like to request that my prepared statement and my interview with

Postmaster William Bolger which appears in this week's Spotlight and which I furnished to the subcommittee will be included in their entirety in the hearing record of my testimony.

Senator STEVENS. They will be.

Ms. KATSON. Liberty Lobby opposes S. 450.

We believe the legislation will vastly increase the enforcement and investigatory powers of the Postal Service, and we do not believe that this Government agency should have such increased police powers when it has demonstrated in the past that it has abused such authority. Specifically, we oppose four provisions of the bill. One, the power to issue cease-and-desist orders; two, the new civil penalties; three, the mirror doctrine, which we believe is flawed; and four, the consumer education program.

The proponents of this legislation and previous measures that failed to pass Congress last year promoted these bills as a way to help and protect the elderly who are victims of mail fraud.

Liberty Lobby recognizes that there are con artists who deliberately bilk unsuspecting people of their money in mail order schemes and we deplore this, but this is mail fraud, not false misrepresentation.

S. 450 would amend the false representation statute which deals with civil offense and not title 18 of the United States Code, which would be the mail fraud statute, a criminal offense.

We are opposed to the Postal Service fighting mail fraud under the wrong statute.

We are convinced that S. 450 will give the Postal Service further powers to harass legitimate businesses and deprive individuals of their constitutional rights.

From its inception until now, this legislation has been misunderstood. The promotion of all of these bills, starting from H.R. 3973, as a protection for the elderly, enticed about 300 cosponsors in the House and 26 cosponsors in the Senate. However, this promotion disguised the fact that certain protections guaranteed by the Constitution were violated by the legislation.

Congressman Vin Weber withdrew his name publicly from the original House bill, when he realized this.

When a new House bill, H.R. 7044, was introduced, it had only three cosponsors. The point of this is that the legislation was presented in such a way as to conceal its dangerous aspects. Promotion of this measure made it difficult for Members of Congress, once they had realized its negative implications, to oppose the bill for fear that they would be accused of being against legislation to protect or help the elderly.

This is exactly the unfair accusation that Jack Anderson has leveled against Senator James McClure.

It's exactly this same attitude, the fear of being accused of being nonsupportive of the elderly, who constitute a power of the voting bloc in this country, that has resulted in a virtual hands-off policy on the part of Congress toward the serious problems facing social security, which led to the formation of a special commission to deal with this dilemma.

One Liberty Lobby supporter, in a letter to Congressman Robert Badham, said that this postal legislation was for the benefit of a

special interest group, senior citizens. But she gives the elderly a lot more credit than drafters of this legislation do. She says:

> I'm sure the senior citizens of this country learned many, many years ago--(the lesson of) "Let the buyer beware" and would be insulted to know that probably many man-hours had gone into a piece of legislation that ostensibly is going to protect them.

This postal legislation has been misunderstood in another serious way: It originally was called the mail fraud bill, and when it became clear that the measures dealt with the false representation statute and not mail fraud, this was still not understood. As late as last December, Members of Congress were telling their constituents time and time again that this bill fought mail fraud.

I had the opportunity to meet with and interview Postmaster General William Bolger a couple of weeks ago. The interview, which dealt with the postal bill, among other issues, appears in this week's issue of the Spotlight.

Although I found Postmaster General Bolger to be a most concerned public servant, I was surprised that he, too, referred to S. 450 as mail fraud legislation. When I pointed out to him that the measures dealt with the false representation statute, a civil offense, and not the mail fraud statute, a criminal offense, he replied, "I use these terms interchangeably, and I probably shouldn't, but I am a layman. Believe me, I am not a lawyer. I am often accused of practicing it, but I am not.

"The legislation is trying to give the Inspection Service more ways of investigating alleged mail fraud."

Mr. Chairman, if the Postmaster General of the United States does not understand that S. 450 deals with false representation and not mail fraud, then who would?

I was troubled by several other remarks that General Bolger made. He told me he was not familiar with the Postal Service's February 11, 1982, banning through the mail of a book by Robert Ford, which advocated a diet of natural foods as a way to keep arteries clean. He said he did not know of any hit list of publications that postal employees routinely checked for any false advertising. He told me he had no knowledge of a list of about 20 books banned by the Postal Service, evidence of which was presented in hearing testimony by the Association of American Publishers.

He said he would check into these matters and get back to me, which he did.

However, I did find it disturbing that the Postmaster General was not aware of these facts.

General Bolger told me that the Postal Service has a right to investigate any consumer complaints it receives. But there is a big difference, I believe, between investigating complaints by consumers and putting stop orders on books that had no consumer complaints filed against them, which is what happened in the Ford book case.

Liberty Lobby is particularly concerned with the seeming preoccupation by the Postal Service with materials relating to health.

The wording of S. 450 does not mention health, but it is quite evident from past incidences that this legislation will target health remedies that are considered to be unorthodox. The Spotlight believes in freedom of choice in health matters and publishes articles

to inform its readers of choices in medicine that are available and often go unreported in the U. S. media.

General Bolger says that if the Postal Service is convinced by experts in the medical field that something going through the mails is fraudulent or misleading to the public, then action should be taken. But this is a very dangerous concept that could prevent the free flow of ideas. This precedent was set in the previously mentioned Ford book case when the Postal Service Court decided that the material was "contrary to the weight of informed medical and scientific opinion."

Exactly what is the consensus of accepted medical and scientific opinion? Surely this is an everevolving entity.

Freedom of expression in this area is protected by the Constitution. And who are these "experts" anyway? Is it fair to allow these so-called experts to decide for everyone else what is, or is not medically or scientifically acceptable? And is it proper to give the Postal Service, a Government agency, the authority to decide who is an expert and, if convinced by this expert, to have the power to prevent these ideas from being passed through the mails?

Liberty Lobby says no, this is not right and that it is very dangerous to permit Government interference into this area.

Although testimony today is centering on S. 450 before the subcommittee today, it is difficult to criticize this legislation or to address it without addressing the larger picture, and that is the movement toward increasing the enforcement and investigatory powers of the Postal Service.

It is important to remember that S. 1407 could have easily passed last year with little fanfare.

This measure, which has proved to be extremely controversial, was ruled to be noncontroversial and was passed by the Senate last May 19 by voice vote. Senator Jesse Helms himself said it was passed "at a time when many Senators were not even present."

At least one, Senator Orrin Hatch, said he would have voted against the measure had he been present.

If S. 1407 or H.R. 3973 had passed, it would have given the Postal Service a new subpena power, the authority to issue civil investigative demands, and it would have outlawed the distribution of banned material not only by mail, but by any instrumentality of interstate commerce, just to name two powers. Indeed, the CID portion was only deleted last year when it became evident that the House would not otherwise pass the "clean" House bill, H.R. 7044.

It is clear that S. 450, as bad as it is, is only another step toward increased Postal Service powers. The agency may be happy for now with what increased authority it gets under the bill, but it will undoubtedly try for more in the near future. General Bolger said that his lawyers fought for a more stringent bill, but that he personally would have nothing of it.

What happens when General Bolger, who says that the Government has no business to get involved with everybody's life and yet supports bills that are increasing the investigatory and enforcement powers of the Postal Service, is no longer in office? What happens if the head of the Postal Service is not so concerned with our freedom and liberties? How will the Postal Service be stopped

from abusing the laws that Congress enacts which increases its powers?

For example, in hearing testimony, an exchange between Congressman William Dannemeyer of California and Postal Service Attorney George Davis illustrated, as improbable and unthinkable and ridiculous as it may seem, how the Bible could be banned from the mail. The Bible could not be banned, Davis said, simply because it was judged to be outside the consensus of scientifically acceptable opinion, but rather because the First Amendment of the Constitution protects freedom of religion.

Davis explained that the previously mentioned Ford case did not fit into the area of acceptable medical and sicentific opinion.

Congressman Dannemeyer, whom Liberty Lobby thanks for his effort to try to fight the postal bill, pointed out that the First Amendment protects all free speech, not just that in the religious area.

I asked General Bolger what would prevent the banning of the Bible by the Postal Service when the Bible, after all, contains material that could easily be argued as contradicting generally accepted scientific opinion. His only assurance to me was that he would never allow such a thing to happen and furthermore, he would "impeach"—that is his word—anyone who would do that. And he said the Postmaster General serves at the pleasure of the Postal Board who could meet in emergency session and kick out any person who would try to ban the Bible.

But General Bolger did not say that the law would not allow this to happen. And this, I will grant you, is an extreme case. But Liberty Lobby finds no comfort in any law that would allow such a thing to happen, and we find no solace in relying on the good graces or personal beliefs of those in public office.

Liberty Lobby prefers that bad laws, as exemplified by the provisions of S. 450, if enacted, never be passed by Congress.

We urge you, Mr. Chairman and members of this subcommittee, to put a stop to the spiraling increase of investigatory and enforcement powers of the Postal Service and to curtail Government interference in this area.

We urge you to oppose S. 450. I thank you very much, Mr. Chairman, for allowing me to have the opportunity to appear today and present our views.

Senator STEVENS. Thank you very much.

I am sure we will hear those arguments on the floor and we will answer them at that time.

[The prepared statements of Mr. Miller, with attachments, and Ms. Katson, with an attachment, follow:]

STATEMENT OF CLINTON RAY MILLER

LEGISLATIVE ADVOCATE OF THE
NATIONAL HEALTH FEDERATION

BEFORE THE SENATE
SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE,
AND GENERAL SERVICES

ON
S. 450 AND H.R. 1342

MARCH 2, 1983

Mr. Chairman and distinguished members of the Subcommittee:

I am pleased to appear before you to offer the comments of the National Health Federation on S.450/H.R.1342.

My name is Clinton Ray Miller. I have represented the National Health Federation for the past 21 years as its Legislative Advocate.

In 1962 we "fathered" and won virtual unanimous approval of NHF's "Human Guinea Pig Amendment" which for the first time in recorded history prevented any further medical experimentation on humans without their informed consent. This amendment has fundamentally changed the practice of medicine not only in the U.S. but throughout the civilized world.

Shortly after you were elected to your first term, Mr. Chairman, you were one of the first U.S. Senators to join Senators William Proxmire and Richard Schweiker as a major supporter and cosponsor of what came to be known as

the "Proxmire/Schweiker Vitamin Bill." In June, 1976 the bill passed the U.S. Congress without a dissenting vote in either the Senate or House in spite of the fact that it was bitterly opposed by the U.S. Food and Drug Administration, the American Medical Association and other powerful vested interests. It was the culmination of a 14 year health freedom battle.

NHF was the principle consumer organization that led and networked this battle against the AMA/FDA attempt to misuse a federal governmental agency to regulate most vitamin and mineral supplements as prescription only drugs.

NHF was organized 28 years ago to fight for similar health freedom legislation and regulation.

We believe that well informed, consenting U.S. Citizens should be free to choose their own health books, therapies, doctors, foods, and drugs without coercion or censorship from the police arm of the U.S. Postal Service, the Federal Trade Commission, FDA, or any other governmental agency, so long as in the exercise of that freedom we are not a threat or hazard to someone else exercising an equal freedom.

We believe that <u>responsible</u>, informed health freedom is as important as religious and political freedom and that all freedoms are closely interrelated and coequal. You can't have one without the other.

Mr. Chairman, we perceive the United States Postal Service as having temporarily taken over the #1 villian's role from the FDA and FTC. The "villian" to us is any federal or state agency which instead of protecting our health freedom works insidiously to destroy it. During the past three decades these three agencies have alternately taken the lead in attempts to get Congress to give them ever broader statutory authority to ban health books, publications, products, and ideas from the market place. And they have been incredibly successful.

Mr. Chairman, because we were in such complete agreement with you in the previous war with the FDA over whether to regulate vitamins as foods or drugs, it was only after the most careful deliberation, following many unsuccessful attempts to reach you through your staff, that NHF decided to oppose S.450/H.R.1342 and its predecessor bills S.1407/H.R.3973/H.R.7044 in the 97th Congress.

Believe me, Sir, this is not a comfortable spot for NHF or for me to be in. We would much rather have you as a health freedom ally than as a worthy opponent.

When I told one of my friends of my serious dilemma he suggested, "Well either Senator Stevens and his staff have gone blind or you and NHF have become paranoid."

Perhaps there are some other alternative explanations but I am willing to concede the possibility that I may have at least "over-reacted" as Henry R. Hoke, Jr., publisher of Direct Marketing, suggested to me in his letter of May 24, 1982. At this point I respectfully request that his letter and my response be included in the record as part of my testimony (see exhibits 1, 1a, and 1b).

Now this brings us S.450/H.R.1342 with you, Sir, Senators Pryor, Heinz, and Glenn, and your most competent and helpful staffs on public record as firmly in favor of it and NHF foursquare against it.

You most certainly are not alone in your position, Sir, nor are we. We are both aware that the House passed H.R. 7044, a nearly identical version of S.450, by an overwhelming 320-61 in the lame duck session late last year.

The only full Senate vote so far, was a unanimous resolution last May in favor of a bill giving the USPS far broader subpoena powers than H.R. 7044. The Senate vote followed a 3-0 vote from this Subcommittee and a 14-0 vote from the Full Committee.

Under the circumstances it is a miracle that Senator James McClure was able to use what Senator Pryor called a "desk filibuster" on the bill to keep it from coming up for a final vote in the final moments of the final hour of last year's lame duck session.

The question now is not whether the proponents of the bill would win if a vote were to be taken tomorrow, because the facts seem to indicate they would.

With all due respect we predict the Senate vote will NOT be a unanimous one the next time around. We perceive that public opinion is rapidly turning against the bill as the citizens become aware of its ramifications and many potentials for abuse. The momentum has switched from pro to con.

Please note our exhibit #2 which I respectfully request be included in the record as part of my testimony. It is my rough worksheet analysis of the 320-61 House vote. You will note that 25 of the 61 House Members who voted against H.R.7044 on December 13, 1982 were previous cosponsors of H.R.3973/S.1407. It is significant that H.R.7044 was jointly presented to the House as a "clean bill" by (1) William D. Ford as Chairman of the Full Committee on Post Office and Civil Service; (2) Claude Pepper as Chairman of the House Select Committee on Aging; and (3) Mickey Leland as Chairman of the House Subcommittee on Postal Personnel and Modernization.

## USPS "HIT LIST" OF PUBLICATIONS

Much of the increasing public opposition to any law which will give the USPS far greater police power than it already has, stems from the fact that the USPS has misused and abused its existing police power.

The full impact of public reaction to the infamous "hit list" of 149 publications secretly compiled by U.S. Postal Inspectors will not be felt for many months. Please note our exhibits #3, 3a, 3b, and 3c which I respectfully request be included in the record as part of my testimony.

Exhibit #3 is a copy of the USPS "Hit List" and a single paragraph from the Honorable William E. Dannemeyer's Dec. 9, 1982 House statement in the Congressional Record, pp. E 5023-5026, entitled "The Mail Fraud Bill is a Fraud." The "Hit List" is on the back of a form letter we prepared to send to the Wall Street Journal and other publications informing them of their inclusion on the heretofore secret "enemies list."

Exhibit #3a and #3b are copies of replies we have received from the Mother Earth News and Dell Horoscope.

Exhibit #3c is the USPS Chief Postal Inspector's August 4, 1982 refusal to release the USPS "Hit List" to me in response to my July 21, 1982 request under the Freedom of Information Act.

FRAUDULENT ADVERTISEMENTS RUN BY USPS IN NEWSPAPERS TO "EDUCATE" IGNORANT READERS ON HOW TO "STAMP OUT MAIL FRAUD" BY "REAL CON MEN"

(See Exhibit #4)

(EXHIBIT 1)

THE REPORTER OF DIRECT MAIL ADVERTISING • The magazine of

**Direct Marketing**

A Monthly Forum Devoted to Business Communications in Selected Markets

May 24, 1982

Mr. Clinton R. Miller
The National Health Federation
212 West Foothill Blvd.
Monrovia, CA 91016

Thank you, Clint Miller . . .

for the batch of literature and a copy of the Ford book. I must say, up front, that I'm disappointed with your charge that the Postal Service has banned Ford's book. I checked immediately with authorities. And that is simply not true. The book is not banned. The question is the advertising, a copy of which you didn't send to me. I am certain, having had it read to me, that the Ethics Committee of the Direct Mail Marketing Association might find the ad misleading and in violation of its Ethical Guidelines.

I checked several dependable sources about whether the Post Office had gone off half-cocked. They haven't, as far as I can determine. I did check on the bill, S1407. It is far from passed. DMMA, Jonah Gitlitz, whom I suggested you call, has actively pursued some changes in the bill. DMMA is concerned with the $10,000 penalty. It should be scaled down. It is only to be imposed on a violation of a consent decree. But it is too high. DMMA is also recommending that the Courts be involved in any actions. The Postal Service is only trying to speed up procedures in acquiring products immediately that they think violate the Postal Statutes.

At this point, I have a feeling you have over-reacted. I'm confident that DMMA can bring about a proper solution. And I have been alerted to watch this bill on our own behalf. We would scream to high heaven if there were a hint of book banning. There is none. But Mr. Ford should state the case straight in his ads.

Cordially,

Publisher

Henry R. Hoke, Jr.

HRH:eg

224 Seventh Street, Garden City, New York 11530 • Telephone 516-746-6700

BEST COPY AVAILABLE

# ARTERIES

## CAN CLEANSE THEMSELVES WITHOUT DRUGS OR SURGERY

A WONDERFUL NEW DISCOVERY, By ROBERT S. FORD

A startling new discovery shows how arteries can cleanse themselves without surgery. Just as your skin can cast out thorns, your arteries can cast out lumps when you stop forming them with the wrong foods. People say things like: "I learned how to eat, and avoided a surgical operation. No scars, no pain, no pills! Saved thousands and didn't miss a day's work. Now my arteries are clean all over, not just where they wanted to cut me. My anginal chest and leg pains are gone! No more standing still while the pain fades! The pulse is strong in my legs again! Cholesterol, blood pressure, and tri-glycerides are reduced to normal. Ear noises and dizziness are gone, and my memory is better. No more blackouts. I saved my eyesight! I learned how to control my weight, yet eat like a king! Tastier food, less kitchen work, less cost, less indigestion. And now my sugar is controlled without pills or needles! I wish I had learned about this sooner!"

You can read all about it in an exciting booklet by the original discoverer. It tells why the old cholesterol diets won't cleanse arteries. How by my discovery you can now enjoy many of the rich and tasty foods denied you by the old humbug cholesterol diets, while your own natural blood flow washes your arteries clean. It tells which familiar foods to eat and which to avoid.

No extra cost or risk. The booklet is fully guaranteed: Return for refund if not satisfied. Over 100,000 copies sold. Don't let yourself or your loved ones suffer and fade away from hardened arteries, heart attack, or stroke. Get your copy of the 48 page booklet "Stale Food vs. Fresh Food" by Robert S. Ford. Send $5.00 plus $1.00 postage and handling = $6.00 total, to get your copy fast by first class mail. Now in revised sixth edition, better than ever. Order your copy now from: Magnolia Lab, Dept. U, Box 1306, Pascagoula, MS. 39567. Just send your name and address on any slip of paper, with $6.00 check, money order, or cash to get your copy fast by first class mail. Makes a fine gift, order extra copies for your friends & relatives.

©Robert S. Ford 1982

(EXHIBIT 1a)

NOTE: This is the mirror image advertisement in question in the Postal Service's notorious "Book Banning" case.

The U. S. Postal Service impounded Mr. Ford's mail from February 12th to May 26, 1982, and thus "banned"the sale of the book because they claimed this advertisement and the booklet contained false representations.

They "proved" their allegations through one expert witness who testified that the opinions expressed in the advertisement and the booklet by Mr. Ford were not in accord with the consensus of medical opinion.

Postal authorities continue to try to mislead the public and the Congress when they say they only were concerned with this advertisement. They claim they did not attempt to censor or ban the text of the booklet.

On page 9 of the initial decision, Edwin S. Bernstein, the Postal Service's Administrative Law Judge said:

"Although I found that the booklet (emphasis is ours) contained some helpful suggestions and its author, Mr. Robert Ford is a knowledgeable and sincere person who thinks that he is performing a beneficial service, I found the representations in Respondent's booklet (emphasis is ours) to be unproven and contrary to the weight of informed medical and scientific opinion."

Reprints of this advertisement available at
50/$2.50 100/$4,00 from NHF Box 688,
Monrovia, CA 91016

(A-214)

(EXHIBIT 1b)

The National Health Federation

A NONPROFIT HEALTH RIGHTS CORPORATION

CLINTON R. MILLER
*Executive Director*

June 1, 1982

Henry R. Hoke, Jr.
Publisher of Direct Marketing
224 Seventh Street
Garden City, New York 11530

Dear Pete:

Thank you very much for your prompt and frank reply to my SOS batch of literature and copy of the Ford booklet sent last week.

Double thanks for your candid evaluation of my charge that the Postal Service has banned Ford's booklet. You said "I'm disappointed with your charge."

"I checked immediately with the authorities" you said.

"And that is simply not true." you added.

"The book is not banned." Sez they to you to me.

The authorities you checked with, were, of course the same authorities we claimed were guilty of banning the booklet.

Voltaire had a pretty good rule when he said we should define our terms before we discussed matters.

Here's our definition of "ban" which is taken from Webster's New World Dictionary College Edition: "Ban. (1) to prohibit (a thing); forbid. (2) to prohibit (a person) from doing something."

Now the undisputed facts are that the same U. S. Postal Authorities who piously deny placing a "ban" upon the Ford booklet placed a stop order Feb. 12 to May 26 upon the thousands of orders Mr. Ford had coming to him during February, March, April and most of May of 1982 and thus forbid him from receiving the orders for four months so he could send the booklet promptly to his customers. The "thing" was the booklet Mr. Ford had authored, advertised, and sold for more than a decade. By Webster's definition, Postal Authorities thus placed the ban on the booklet "thing" by forbidding" or "prohibiting" receipt of the orders.

I submit that Webster's #1 and #2 definitions of "ban" fit the facts in the Ford case quite properly. A "person" was "forbid" and "prohibited" from receiving (and thus fulfilling) orders for a "thing."

Now you were informed by the authorities that the question is the ADVERTISING. (emphasis is mine). Enclosed is the ad in question.

It is a superb "mirror image" of the booklet. FTC would never move against it.

You said they read it to you and added "I am certain that the Ethics Committee of the Direct Mail Marketing Association might find the ad misleading and in violation of its Ethical Guidelines."

Let's find out.

I have enclosed two copies. Would you forward one to the Ethics Committee and send me a copy of their answer?

I would also appreciate it if I could have a copy of DMMA's ethical guideliner.

I finally reached Jonah Gitlitz. We support all the amendments DMMA is requesting as far as they go. But they fall short of the NHF goal to kill the bills.

We are glad "DMMA is concerned with the $10,000 penalty." We agree "it should be scaled down." We think it should be scaled down to $0.00 where it has been properly for the past 200 years. There should never never never be a criminal penalty for violation of a civil statute. Yet that is exactly what S-1407/H.R. 3973 proposes Owners of Mail order companies should not be fined who have never been accused, much less convicted of any sort of crime whatsoever.

In summary you say you "have a feeling I have overreacted." How relieved I am to have you say that.

I was feeling guilty that I had toned down NHF's position too far. After reading the amended version of S-1407, some of the reactions of the milder members of Executive Committee were "The postal tyranny bills are thought control legislation." "The bills were designed to deceive." "The bills will stop the free flow of information on alternative health theories." "S-1407/H.R. 3973 will turn postal service inspectors into thought police." "Authors of any health theories not in accord with the consensus of medical opinion will never find a publisher rash enough to print, let alone advertise a book with such heresy." "The postal service has at last learned how to burn books without flame or smoke." and "The bills do violence to the 1st and 4th amendments."

I think Mr. Ford did state the case straight in his ads, that his booklets were banned and that we are very lucky to work for different associations whose viewpoints approximate ours.

You wouldn't really be devestated if we killed the bill, would you?

Sincerely,

Clinton R. Miller

Clinton Miller (the bill killer)
Executive Director

CRM/es

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(EXHIBIT 2)

POST OFFICE BILL - VOTING NAY - 12/13/82; Congressional Record-HOUSE P. H 9617

| CONGRESSMEN | COSPONSOR OF H.R. 3973 | STATE | DEMOCRAT | REPUBLICAN | TERM | AGING OR P.O. COMMIT. |
|---|---|---|---|---|---|---|
| 1. ARCHER, BILL | NO | TEX. | | R | 6th | |
| 2. ASHBROOK, JOHN | NO | OHIO | | R | 11th | |
| 3. BADHAM, ROBERT E. | NO | CA | | R | 3rd | |
| 4. BAILEY, WENDELL | NO | MO | | R | 1st | P.O. COM. |
| 5. BARNARD, DOUG | YES | GA | D | | 3rd | |
| 6. BEARD, ROBIN L. | YES | TENN | | R | 3rd | |
| 7. BUTLER, CALDWELL M. | YES | VA | | R | 6th | |
| 8. CARMAN, GREGORY W. | NO | N.Y. | | R | 1st | AGING |
| 9. COATS, DANIEL R. | YES | IND. | | R | 1st | AGING |
| 10. COLLINS, JAMES M. | NO | TEX. | | R | 8th | |
| 11. CRAIG, LARRY E. | NO | IDAHO | | R | 1st | AGING |
| 12. CRANE, DANIEL B. | NO | ILL. | | R | 2nd | P.O. COM. |
| 13. CRANE, PHILIP M. | NO | ILL. | | R | 7th | |
| 14. DANNEMEYER, WILLIAM E. | NO | CA | | R | 2nd | P.O. COM. |
| 15. DORNAN, ROBERT K. | NO | CA | | R | 3rd | AGING |
| 16. DRIER, DAVID | YES | CA | | R | 1st | |
| 17. EVANS, BILLY LEE | NO | GA | D | | 3rd | |
| 18. FIELDS, JACK | NO | TEX | | R | 1st | |
| 19. FLORIO, JAMES J. | YES | N.J. | D | | 4th | AGING |
| 20. GINGRICH, MEWT | YES | GA | | R | 2nd | |
| 21. GLICKMAN, DAN | YES | KAN | D | | 3rd | |
| 22. GORE, ALBERT | NO | TENN | D | | 3rd | |
| *23. GRAMM, PHIL | NO | TEX | D ? | R ? | 2nd | |
| 24. GREGG, JUDD | YES | N.H. | | R | 1st | AGING |
| 25. HANCE, KENT | NO | TEX | D | | 2nd | |
| 26. HANSEN GEORGE | YES | IDAHO | | R | 6th | |
| 27. HANSEN, JAMES V. | NO | UTAH | | R | 1st | |
| 28. HILER, JOHN P. | YES | IND | | R | 1st | |
| 29. JEFFRIED, JIM | NO | KAN. | | R | 2nd | |
| 30. JOHNSTON, EUGENE | NO | N.C. | | R | 1st | |
| 31. KEMP, JACK | NO | N.Y. | | R | 6th | |
| 32. KINDNESS, THOMAS N. | NO | OHIO | | R | 4th | |
| 33. KRAMER, KEN | YES | COL. | | R | 2nd | |

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(PAGE 2 of EXHIBIT 2)

POST OFFICE BILL - VOTING NAY -12/13/82; CONGRESSIONAL RECORD-HOUSE P. H 9617



| CONGRESSMEN | COSPONSOR OF H.R. 3973 | STATE | DEMOCRAT | REPUBLICAN | TERM | AGING OR P.O. COMMIT |
|---|---|---|---|---|---|---|
| 34. LAGOMARSINO, ROBT. J. | YES | CA | | R | 5th | |
| 35. LEATH, MARVIN | NO | TEX | D | | 2nd | |
| 36. LeBOUTILLIER, JOHN | YES | N.Y. | | R | 1st | |
| 37. LOEFFLER, TOM | YES | TEX | | R | 2nd | |
| 38. MARLENEE, RON | NO | MONT. | | R | 3rd | |
| 39. McCLORY, ROBERT | NO | ILL. | | R | 10th | |
| 40. McDONALD, LARRY | NO | GA | D | | 4th | |
| 41. McEWEN, BOB | YES | OHIO | | R | 1st | |
| 42. MILLER, CLARENCE E. | NO | OHIO | | R | 8th | |
| 43. OTTINGER, RICHARD L. | YES | N.Y. | D | | 7th | |
| 44. OXLEY, MICHAEL G. | NO | OHIO | | R | 1st | |
| 45. PAUL, RON | NO | TEX | | R | 2nd | |
| 46. PORTER, JOHN E. | YES | ILL. | | R | 1st | |
| 47. QUILLEN, JAMES H. | NO | TENN | | R | 10th | |
| 48. ROEMER, BUDDY | YES | LA | D | | 1st | |
| 49. SEIBERLING, JOHN F. | YES | OHIO | D | | 6th | |
| 50. SHANNON, JAMES M. | NO | MASS | D | | 2nd | |
| 51. SHUMWAY, NORMAN D. | YES | CA | | R | 2nd | AGING |
| 52. SILJANDER, MARK D. | YES | MICH | | R | 1st | |
| 53. SMITH, ALBERT LEE | NO | ALA | | R | 1st | |
| 54. SMITH, DENNY | YES | ORE | | R | 1st | |
| 55. STATON, DAVID MICHAEL | NO | W.VA | | R | 1st | |
| 56. STRATTON, SAMUEL | NO | N.Y. | D | | 12th | |
| 57. STUMP, BOB | NO | ARIZ | D ? | R ? | 3rd | |
| 58. SWIFT, ALLAN | NO | WASH | D | | 2nd | |
| 59. VANDER JAGT, GUY | NO | MICH | | R | 9th | |
| 60. WEBER, VIN | YES | MINN | | R | 1st | |
| 61. YATES, SIDNEY R. | YES | ILL | D | | 16th | |
| TOTALS: | NO = 36<br>YES = 25 | | 16 | 45 | | P.O. = |

* Phil Gramm is a Democrat who has announced he will run as a Republican for reelection.

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(EXHIBIT 3)

H.R. 7044—THE MAIL FRAUD BILL IS A FRAUD

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

...Perhaps most ominously, the appended "hit list" of 149 publications contain those which are routinely monitored for false representations by Postal Inspectors at 17 divisional headquarters. The Postal Service is quick to point out that these publications are not themselves scrutinized for attack, but rather their advertisements. I would merely observe that once the advertisers are out of business, the publications are not far behind...

CONGRESSIONAL RECORD
*December 8, 1983*
E 5025

HIT LIST

*Northeast Region*

Business Week, 1221 Ave. of the Americas, New York, NY 10020.
Club, Fiona Press, Inc., 919 Third Ave., New York, NY 10022.
Commodities, 219 Parkade, Cedar Falls, IA 50613.
Direct Marketing News, 150 E. 58nd Street, New York, NY 10022.
Discover, Time & Life Building, 1271 Ave. of the Americas, New York, NY 10020.
Forum, 909 Third Ave., New York, NY 10022.
Glamour 350 Madison Ave., New York, NY 10017.
Globe, P.O. Box 11, Rouses Point, NY 12979.
Harvey, 450 Seventh Ave., Suite 2305, New York, NY 10001.
High Society, P.O. Box 243, Norwood, NJ 07648.
Horoscope, 245 E. 47th St., New York, NY 10017.
House Beautiful, 717 Fifth Ave., New York, NY 10022.
Jack Becker, Ltd., Box 3550, New York, NY 10017.
Mechanix Illustrated, 1515 Broadway, New York, NY 10036.
Medical Bulletin, P.O. Box 51, Rouses Point, NY 12979.
Modern Health Report, P.O. Box 603, Ridgefield, CT 06877.
Modern Romances, Dell Publishing Co., Inc., 1 Dag Hammarskjold Plaza, New York, NY 10017.
Moneysworth, 251 West 57th St., New York, NY 10019.
National Examiner, P.O. Box 711, Rouses Point, NY 12979.
National Lampoon, 635 Madison Ave., New York, NY 10022.
Penthouse, 909 Third Ave., New York, NY 10022.
Pensions & Investments, 730 3rd Ave., New York, NY 10017.
Screw, Milky Way Productions, P.O. Box 432, Old Chelsea Station, New York, NY 10011.
Seventeen, 850 Third Ave., New York, NY 10022.
The Star, 155 Allen Blvd., Farmingdale, NY 11737.
VFW 406 W. 34th St., Kansas City, MO 64111.
Village Voice, 80 University Place, New York, NY 10003.
Viva, 150 Allen Blvd., Farmingdale, NY 11737.
Wall Street Journal, 22 Cortlandt St., New York, NY 10007.

*Eastern Region*

American Business, 1775 Broadway, New York, NY 10019.
Antiques, 551 5th Ave., New York, NY 10017.
Contract Magazine, 1515 Broadway, New York, NY 10036.
Eve's Press, RD 4, Box 533, Franklinville, NJ 08322.
Fortune, 541 N. Fairbanks Ct., Chicago, IL 60611.
Genesis Publications Inc., 770 Lexington Ave., New York, NY 10021.
Grit, 208 W. Third St., Williamsport, PA 17701.
Healthview Newsletter, P.O. Box 6870, Charlottesville, VA 22906.
House and Garden, 350 Madison Ave., New York, NY 10017.
Irish Echo, 1860 Broadway, New York, NY 10023.
Ladies Circle, 21 W. 30th St., New York, NY 10010.
Ladies Home Journal, 641 Lexington Ave., New York, NY 10022.
Modern Love, 355 Lexington Ave., New York, NY 10017.
Money Manager, One State St. Plaza, New York, NY 10004.
Official Detective, 235 Park Ave., South, New York, NY 10003.
Prevention, Emmaus, PA 18098.
Redbook, P.O. Box 6343, Des Moines, IA 50348.
Retirement Life, 1533 New Hampshire Ave., NW, Washington, D.C. 20036.
Saga, 233 Johnson Ave., Brooklyn, NY 11206.
Soap Opera Stars, 355 Lexington Ave., New York, NY 10017.
Swingers Life, P.O. Box 2287, York, PA 17405.
The Gay News, Masco Communications, 223 S. 13th St., Philadelphia, PA 19107.
TV Dawn to Dust, Ideal Publishing Corp., 2 Park Ave., New York, NY 10016.
TV Guide, P.O. Box 900, Radnor, PA 19088.
TV & Movie Gossip, Sterling's Magazines, Inc., 355 Lexington Ave., New York, NY 10017.
TV & Movie Screen, Sterling's Magazines, Inc., 355 Lexington Ave., New York, NY 10017.
Vegetarian Assoc. of America, P.O. Box 847, South Orange, NJ 07079.
Vogue, Box 5266, Boulder, CO 80321.
Yachting, 50 W. 44th St., New York, NY 10036.

*Central Region*

American Health, P.O. Box 10094, Des Moines, IA 50347.
Better Homes and Gardens, Meredith Corporation, 1716 Locust Street, Meredith Building, Des Moines, IA 50336.
Capper's Weekly, Sixth & Jefferson, Topeka, KS 66607.
Cosmopolitan, P.O. Box 10070, Des Moines, IA 50374.
Ebony, Johnson Publishing Co., Inc., 820 S. Michigan Ave., Chicago, IL 60605.
Energy Age, 10488 W. 6th Place, Denver, CO 80215.
60 Plus, 850 Third Ave., New York, NY 10022.
Gun World, 34249 Camino Capistrano, P.O. Box HH, Capistrano Beach, CA 92624.
Herald of Health, P.O. Box 583, Mount Ayr, IA 50854.
Hustler, 40 East Gay St., Columbus, OH 43216.
Medical Education and Research Foundation, Inc., 1000 Waterway Blvd., Indianapolis, IN 46202.
Modern People, 11068 W. Addison St., Franklin Park, IL 60131.
Money, Time & Life Building, Rockefeller Center, New York, NY 10019.
National Informer, 11068 W. Addison St., Franklin Park, IL 60131.
NRTA/AARP News Bulletins, 430 Lexington Ave., New York, NY 10017.
Outdoor Life, 380 Madison Ave., New York, NY 10017.
Oui, Playboy Publications, Inc., 919 North Michigan Ave., Chicago, IL 60611.
Paraplegia News, 5201 North 19th Ave., Suite 111, Phoenix, AZ 85015.
People, 11068 W. Addison St., Franklin Park, IL 60131.
Personal Romances, Ideal Publishing Corp., 2 Park Ave., New York, NY 10016.
Playboy, Playboy Building, 919 N. Michigan Ave., Chicago, IL 60611.
Psychology Today, One Park Avenue, New York, NY 10016.
Spare Time, 5810 W. Oklahoma Ave., Milwaukee, WI 53219.
Specialty Salesman and Business Opportunities, 307 N. Michigan Ave., Chicago, IL 60601.
Sports Afield, 250 West 55th St., New York, NY 10019.
Success, 401 N. Wabash, Chicago, IL 60611.
True Confessions, Macfadden Group, P.O. Box 5035, Des Moines, IA 50340.
True Love, Macfadden Women's Media, Inc., P.O. Box 10015, Des Moines, IA 50304.
True Story, The Mcfadden Group, P.O. Box 5013 TS, Des Moines, IA 50340.
UB, P.O. Box 10193, Des Moines, IA 50348.

*Southern Region*

Alfred Hitchcock's Mystery Magazine, Davis Publications, Inc., 380 Lexington Ave., New York, NY 10017.
Argosy, Popular Publications, Inc., 420 Lexington Ave., New York, NY 10017.
Bronze Thrills, Good Publishing Co., 1230 Harding St., P.O. Box 2357, Fort Worth, TX 76101.
Cheri, 215 Lexington Ave., New York, NY 10016.
Christian Science Monitor, 220 E. 42nd St., New York, NY 10017.
Craft, Model & Hobby Industry, 235 W. 34th St., New York, NY 10001.
Family Circle, 488 Madison Ave., New York, NY 10022.
Field and Stream, 1515 Broadway, New York, NY 10036.
Flying, One Park Ave., New York, NY 10016.
Forbes, 60 5th Ave., New York, NY 10017.
Gallery, Montcalm Publishing Corp., 90 Park Avenue, New York, NY 10016.
Health, 149 Fifth Ave., New York, NY 10010.
High Times, Box 503, Farmingdale, NY 11735.
Il Progresso, 360 Audobon Ave., New York, NY 10033.
Intimate Story, Ideal Publishing Corp., 2 Park Ave., New York, NY 10016.
Mademoiselle, 350 Madison Ave., New York, NY 10017.
Movie Life, 575 Madison Ave., New York, NY 10022.
Movie Mirror, 355 Lexington Ave., New York, NY 10047.
National Enquirer, 600 S. East Coast Ave., Lantana, FL 33464.
Parade, 733 Third Ave., New York, NY 10011.
Photoplay, 205 East 42nd St., New York, NY 10017.
Popular Electronics, One Park Ave., New York, NY 10016.
Popular Mechanics, 224 W. 57th St., New York, NY 10019.
Popular Science, 380 Madison Ave., New York, NY 10017.
Screen Stories, 575 Madison Ave., New York, NY 10022.
Sepia Publishing Co., P.O. Box 2287, 1230 Harding St., Fort Worth, TX 76101.
Skin, Denmark Publishing Co., P.O. Box 482, New York, NY 10019.
The Mother Earth News, 105 Stoney Mountain Rd., Henderson, NC 27536.
Values by Mail, Samsondale Professional Bldg., Suite 208, W. Haverstraw, NY 10993.
Woman's Day, 1515 Broadway, New York, NY 10036.
World Weekly News, 600 S. East Coast Ave., Lantana, FL 33463.

*Western Region*

American Legion, 700 N. Pennsylvania St., P.O. Box 1055, Indianapolis, IN 46206.
At Home, P.O. Box 2750, Boulder, CO 80302.
Chic, 2029 Century Park East, Los Angeles, CA 90067.
Cycle News, Box 498, Long Beach, CA 90801.
Dynamic Years, 319 Long Beach Blvd., Long Beach, CA 90801.
Entrepreneur, 2311 Pontius Ave., Los Angeles, CA 90064.
Esquire, P.O. Box 3991, Boulder, CO 80322.
Essence, P.O. Box 2560, Boulder, CO 80321.
Fetish Times, P.O. Box 7150, Van Nuys, CA 91409.
Gentlemen's Quarterly, P.O. Box 2982, Boulder, CO 80321.
Gordon-Star, Box 6993, Burbank, CA 91505.
Impulse, 306 E. Fourth Place, Suite 101, 906, Los Angeles, CA 90013.
Income Opportunities, 380 Lexington Ave., New York, NY 10017.

This Form Letter prepared for my convenience by Clinton Ray Miller, Legislative Advocate, National Health Federation, 5055 Seminary Rd., #1634, Alexandria, VA 22311
Phone: 703-379-0589
Additional Copies: NHF HDQ., Box 688, Monrovia, CA 91016
$2.50/50; $4.00/100
ORDER # A 225

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# WHAT IS A NICE NEWSPAPER LIKE THE WALL STREET JOURNAL DOING ON A POLICE STATE "HIT LIST"????????

_____19____

WALL STREET JOURNAL
22 Cortlandt Street
New York, New York 10007

Dear Editor:

Did you know the WALL STREET JOURNAL is one of 149 publications on the heretofore secret "enemies list" of the United States Postal Service Thought Police?

Thanks to the research and statesmanship of Congressman William E. Dannemeyer (R. CA) the hit list was discovered and made public in the Congressional Record of Thrusday, December 9, 1982. (see other side)

As a matter of taste and choice most of us would not want some of these publications mailed to our homes, but that isn't the issue. The question is what right does the USPS have to make any list of newspapers and magazines for the alleged purpose of keeping their advertisements under constant surveillance?

Do you think your advertisers would be pleased to know that every day their ads are being closely scrutinized just because they advertise in your publication?

I will not tolerate USPS censorship or surveillance of the press or of the advertisements or advertisers who use a free press to tell me and other consumers about new products, ideas or services. It is a small step from censoring advertising to censoring editorial content.

There are adequate tough laws already on the books to protect me and other consumers from mail fraud.

I agree with Benjamin Franklin that the purpose of the U.S. Postal Service should be to quickly and inexpensively deliver any non-fraudulent mail that will not explode or cause a fire.

Last year the USPS nearly tricked the 97th Congress to enact a terrible bill (H.R. 3973/H.R. 7044/S.1407) which would have greatly increased its already excessive police power to continue banning books, products and ideas from using the mail.

You read it right! I said the USPS Thought Police has banned books under its present authority!!! The Association of American Publishers in testifying last year against these Postal Tyranny Bills said: ..."roughly 20 books have been banned from the mails"...because, according to the Postal Service, they contain 'false ideas'.

This year these Orwellian Postal bills will be reintroduced in the 98th Congress. We will need your help to expose and oppose them. We should start by insisting the USPS take the WALL STREET JOURNAL off its hit list and that such police state surveillance lists never again be tolerated by a free press in the U.S.A.

Sincerely,

_____ Name (Print)

_____ Signature

_____ Street Address

_____ City, State, Zip Code

Julia A. Wagner
Editor-in-Chief
212/605-3439

Ronnie J. Grishman
Associate Editor
212/605-3441

Diane Pilatsky
Assistant Editor
212/605-3442

Ed Kajkowski
Assistant Editor
212/605-3440

(EXHIBIT 3a)

DELL/HOROSCOPE
THE WORLD'S LEADING ASTROLOGICAL MAGAZINE

January 25, 1983

Mr. Clinton Ray Miller
5055 Seminary Road, 1634
Alexandria, VA 22311

Dear Mr. Miller:

Thank you for calling my attention to the outrageous power given to the U.S. Postal Service to compile a "Hit List" of magazines and newspapers.

Congressman Dannemeyer is to be commended for exposing the list. The Health Freedom News has done us a great service by publishing the list in its December, 1982, edition.

If it had not been for your interest in our publication, we would have remained in the dark about this matter and would not have had the opportunity to raise our voices in protest.

Sincerely yours,

Julia A. Wagner

JULIA A. WAGNER
Editor-in-Chief
HOROSCOPE Publications

JAW:w



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(EXHIBIT 3b)

THE MOTHER EARTH NEWS®
Post Office Box 70 • Hendersonville, N.C. 28791 • (704) 693-0211

February 9, 1983

Clinton Ray Miller
5055 Seminary Road, No. 1634
Alexandria, VA 22311

Dear Clinton:

Thank you for passing on the National Health Federation's information on the U.S. Post Office's official "enemies list". As you can imagine, we at THE MOTHER EARTH NEWS® are quite disturbed that our publication is included on such a list and -- even if we weren't included -- we would be shocked by this apparent intrusion upon the rights of the free press. We will be looking further into the matter in the weeks to come, in an attempt to determine an appropriate course of action. Again, though, I want to thank you and the many others who wrote to warn us about the "hit list".

Yours,

Bruce Woods
Editor

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(EXHIBIT 3c)

CHIEF POSTAL INSPECTOR
Washington, DC 20260-2100

August 4, 1982

Mr. Clinton R. Miller
Executive Director
The National Health Federation
5055 Seminary Road, No. 1634
Alexandria, VA 22311

Dear Mr. Miller:

This is in reference to your nine letters dated July 21, 1982, addressed to Mr. D. J. Harrington, Postal Inspector in Charge, Special Investigations Division (SID), in which you requested, pursuant to the Freedom of Information Act, access to the listings of all media publications "whose ads are routinely reviewed" by SID.

The material you requested is exempt from mandatory disclosure since it consists of investigatory records compiled for law enforcement purposes. Therefore, the material in question is being withheld from release pursuant to title 5, United States Code, section 552(b)(7)(E), where disclosure would reveal investigative techniques and procedures. Furthermore, I must decline to release the requested material because it is exempt from disclosure in accordance with section 552(b)(2), which relates solely to the internal personnel rules and practices of an agency.

As provided in title 39, Code of Federal Regulations, part 265, you have a right to appeal this decision. A copy of the appeal procedure has been previously furnished to you.

Sincerely,

K H Fletcher

K. H. Fletcher

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(EXHIBIT #4)

THE ARIZONA REPUBLIC AND GAZETTE

120 East Van Buren, Phoenix, AZ

April 8, 1982

# Bogus ads to alert potential victims about postal fraud

4-8-82

Associated Press

PITTSBURGH - The Postal Service is going undercover in its war to stamp out mail fraud by placing phony newspaper ads to lure potential victims before they fall prey to real con men.

The Postal Service is starting its campaign by placing the advertisments in newspapers in three states, hoping people vulnerable to moneymaking schemes and other frauds will fall for the bait.

When a reader responds to a false ad, the Postal Service will send back his postage and a brochure warning about envelope stuffing, medical fraud, chain letters and other shady enterprises.

"The purpose isn't to call someone a dummy. We're just saying, 'Be careful,'" said Kacy McClelland, a consumer-protection specialist for the Postal Service's Pittsburgh division.

Last week, the ads were sent to newspapers in western Pennsylvania, West Virginia and most parts of New York. The three states make up the Pittsburgh division, one of 17 districts in the country, each of which operates its own consumer-protection program.

McClelland said that as far as he knows, this is first time the Postal Service has run a large number of such ads for victims in any of its divisions.

One ad asks readers if they want to earn $750 a month in their spare time at home. The other is for a "European Reducing Formula" that promises readers will "lose weight like never before."

The Postal Service asked 51 newspapers to run the bogus ads. Twelve rejected it outright, but some others asked to participate in the program after confirming the Postal Service was behind it, McClelland said.

The Postal Service estimates that of the $70 billion to $80 billion worth of mail-order business conducted nationwide last year, about $500 million was fraudulent.

It is not a crime to answer ads for moneymaking schemes, but con men who place the ads face a maximum punishment of five years in jail and a $1,000 fine if convicted of mail fraud.

The Pittsburgh division has other programs aimed at alerting people about the schemes. McClelland said the division placed brochures at the Better Business Bureau but found the pamphlets weren't getting into the hands of people likely to be duped.

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STATEMENT OF CLINTON RAY MILLER
NHF TESTIMONY: PART TWO

FOUR MAJOR FLAWS IN S. 450

PROPOSED AMENDMENTS

FIRST FLAW: The last 17 lines of S. 450 beginning with line 19 on page 7 gives far too much authority without adequate guidelines for the USPS. The USPS would be able to carry out a massive nationwide program of adverse prejudging publicity against any targeted group or industry marketing plan, etc., under the pretext that USPS is "providing consumer education to the public." The bill grants unlimited new statuatory authority to use an unlimited number of employees and Postal Service facilities to carry on a function unrelated to the prompt delivery of the mail.

For example, a sister agency, the U.S. Food and Drug Administration, was granted similar authority and carried on a long and bitter unfair nationwide adverse publicity campaign against Health Food Stores and the Vitamin Industry during the late '50s, '60s, and early '70s to coincide with their attempt to regulate vitamins as Rx Drugs.

Following the word "scheme" on line 7, page 8 we propose the addition of an amendment as follows:

FIRST AMENDMENT: Nothing in this section shall be construed as allowing the USPS or any of its employees to use this authority to generate, develop, or conduct any adverse prejudging publicity against any individual, group, or business about to be or being prosecuted by the USPS.

SECOND FLAW: The bill authorizes excessive, new civil fines as penalties, to be increased more than 700,000%.

The bill authorizes exhorbitant civil fines of $7 million per year, which are more than 7,000 times higher than USPS criminal fines now authorized under the USPS act.

The present maximum civil penalty and the MAXIMUM civil fine which has been authorized by Congress ever since Benjamin Franklin organized the first U.S. Post Office 200 years ago is $0.00 (ZERO).

Now, Mr. Chairman and members of this important Subcommittee, lets be reasonable. When inflation gets into double digit figures almost all lawmakers recognize it is excessive. What has suddenly happened in America or the USPS, that civil penalties should be increased by more than 700,000% in a single year?

The answer is that the USPS has discovered that not only the present Postmaster General but the majority of Congress and the majority of U.S. citizens do not understand the fundamental differences between the words "civil" and "criminal." The present Postmaster General uses the terms interchangeably.

This blurring of terms does violence to justice.

WHY DOES THE USPS WANT TO USE THE CIVIL, RATHER THAN THE CRIMINAL STATUTES TO PROSECUTE CRIMINALS?

The most obvious reason is that it is a thousand times

easier to prosecute under civil statutes than under criminal statutes.

Under criminal statutes a person alleged to be guilty of fraud or other crime is presumed to be innocent until proven guilty. A very high standard of proof is required to win a criminal conviction.

Under civil statutes, the person alleged to be in violation of the statute may be presumed to be guilty and the entire burden of proof can be quickly and easily shifted to the accused to prove him(her)self innocent upon the testimony of a single governmental witness. An extremely low standard of proof is required to win a civil conviction (See Magnolia Labs vs USPS, 1982).

The bottom line is that the USPS wants to be given the awesome authority under S. 450/H.R. 1342, to prosecute criminals under civil rather than criminal statutes. The key word in criminal prosecution is "intent." Without it there is no crime.

The Senate should reject the USPS proposal with a resounding "NO" that will be heard and remembered for the next 200 years.

The USPS is winning 98% of its criminal cases brought to trial.

SECOND PROPOSED AMENDMENT: On page 4, starting with line 10 and continuing through to line 5 on page 6, change the title of this section by striking the word "Civil" and putting in its place the word "Criminal" each of the 6 times the word "Civil" occurs. (P. 4 lines 10, & 14. P. 5 lines 3, 13, and 21.)

On page 4, line 11, strike the words "Chapter 30 of title 39, United States Code" and put in their place the words "Chapter 18, United States Code, section 1341."

On page 4, strike all references to "section 3005(a)(1) or 3005(a)(2)" and "section 3007(b)" and insert the appropriate sections which will apply to title 18, United States Code, section 1341.

Explanation: The intent of the second NHF amendment is to make it clear that Congress intends criminals to be prosecuted and fined under the criminal code, not under the civil statutes. NHF has no objection to raising the maximum fines for CRIMINAL CONVICTIONS from the present $1,000 one time maximum to the levels proposed in S. 450.

THIRD FLAW: The flawed "mirror image doctrine" section in S. 450 will give the USPS clear statutory authority to proceed with full Congressional approval to ban health books and magazines and other publications more vigorously and ruthlessly in the future than it has in the past. The

USPS already has Prevention magazine on its "hit list." Under S. 450 and existing case law precedents the USPS can ban the entire magazine.

Please note our Exhibit #5, which is a partial list of the health books and other publications already banned by the USPS under existing authority. To its everlasting discredit, USPS now boasts about its banned books. I respectfully request that Exhibit #5 be included in the record as part of my testimony.

The so called "Mirror Image Doctrine" on pages 2 and 3 of S. 450 creates a false image. It is written to supposedly answer the first amendment concerns NHF and others raised in House Hearings last year. The loophole under (C) page 3, line 1, is larger than the mirror. It shatters not only the mirror but image and the First Amendment protection of the press.

PROPOSED THIRD AMENDMENT: On page 3, line 1, place a period after the word "publication" and strike the balance of the words "and (c) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme."

The hard facts are that the entire "Health Food Movement" is built upon just such sale of millions of health books, magazines, and other publications to "promote the sale of some other product as part of a commercial scheme."

I wouldn't use the word "scheme" but that is the word used by the authors of S.450/H.R. 1342 to imply that anyone who uses a book or publication to promote the sale of some vitamin or exercise device must certainly be engaged in a "plot" or making "devious plans" which are the words Webster associates with the evil sounding word "scheme."

The bottom line is that just last year the USPS won the Magnolia Labs case which has set an incredibly bad precedent. The district court upheld the right of Postal Inspectors to ban any health book, magazine, or advertisement which advocates new ideas or theories. The USPS won the right to ban all health publications printing articles or advertisements which are "unproven and contrary to the weight of informed medical and scientific opinion." (See our Exhibit 1a referred to previously)

FOURTH FLAW: Three innocent sounding words, "cease and desist" will give the USPS more Orwellian power to permanently shut down any business or profession in the U.S. than is currently held by the CIA, FBI, IRS, OSHA, FDA, and all other federal agencies combined.

To understand how the "cease and desist" orders could be used to close down companies that have never even been accused, much less found guilty of a single crime, one must match the awesome new police powers and fines of S. 450 with a long string of case law precedents recently won by the USPS.

I testified in the House Hearings on S.1407/H.R.7044 on the horrible mistake Congress made in 1967 when it removed a 200 year old requirement that the USPS had to prove "an intent to deceive" before it could ban a health or any other book. In the 16 years since then the USPS has carefully selected and won key case law precedents which will now allow it to do what the FDA and FTC tried for 30 years to do, but failed. The USPS has become the first federal agency to play the role of a diet dictator.

The USPS has banned the once famous "Grapefruit Diet" from the U.S. marketplace. I can't find or buy a copy of it anyplace. Under S. 450, if Family Circle, Glamour, or Ladies Home Journal, (which are all on the USPS "hit list" - see Exhibit #3) dared to act "in privity" with the original publisher and republish the now forbidden and banned "grapefruit diet" and sell it for 25¢ (which was the rather reasonable price being charged at the time the USPS took the publishers to court), the publisher would be subject to fines of $20,000 per day or over $7 million a year. Family Circle, Glamour, or Ladies Home Journal each would then be subject to additional fines of $10,000 per day if they dared to act "in privity" with the original publisher of the diet to "evade, or fail to comply with such a (cease and desist or stop) order. (See page3, lines 21-25)

You, Mr. Chairman, took leadership role along with the rest of the U.S. Congress to prevent the FDA from setting itself up as the diet dictator of the U.S. Now, for some reason I cannot yet fathom, you and Senator Pryor are chief sponsors of S. 450, a bill which will give the USPS even more of the same tyrannical authority.

Our final exhibit (Exhibit #6) consists of two advertisements taken from the National Enquirer for Robert Ford's health booklet. They demonstrate how ridiculous and indefensible the USPS position is in the precedent setting Magnolia case. Under S. 450, using one of these ads can subject the publisher to $20,000 fines per day (or more than $7 million per year) for each day the ad runs or he sells a booklet from the ad. The purpose of this exhorbitant fine is of course supposed to be "to protect the aged from fraud." The other ad, according to the USPS is pristine clean and in no way deceives or defrauds any unsuspecting aged person into buying the same booklet.

I challenge you, Sir, to tell me which ad is prissy clean and truthful in the eyes of the USPS and which is so grossly fraudulently false and misleading that it has become the USPS's most famous example of "consumer protection." Remember, Sir, in prosecuting Robert Ford for one ad and in giving an O.K. for the other, the USPS claims it is carrying out "the intent of Congress."

Is it?

FOURTH PROPOSED AMENDMENT: On page 2, line 12, strike the words "cease and desist" and all language relating to it in S. 450.

Mr. Chairman, with all the above 4 major amendments, the National Health Federation could and would support enactment of S. 450/H.R. 1342.

(EXHIBIT # 5)

## BOOKS AND OTHER PUBLICATIONS BANNED BY THE U.S. POSTAL SERVICE FROM 1968-1982

Excerpt taken from Product Index--Fraud and False Representation Cases--Decisions of Judicial Officer Department, U. S. Postal Service.

### Books/Booklets

| | |
|---|---|
| MAGNOLIA LABS & MAGNOLIA LABORATORY<br>Publication "Stale Food vs Fresh Food | ID 10/123 (7/28/81) |
| UNITED STATES/GREAT LAKES FEDERAL SURPLUS DEPOSITORY<br>Official US Surplus Directory | ID 7/136 (5/13/80)<br>PS 3/31/81 |
| SUPER-CAR PUBLICATIONS<br>Own & ,Drive a New Car Free | ID 7/127 (2/19/80) |
| HEALTH PURFIERS, INC.<br>Book on prostate gland treatment | PS 6/78 (1978) |
| ANGLER'S/ANGLERS FRIEND<br>Book on how to obtain free tackle | ID 5/58 (1976) |
| B-BEAUTIFUL METHOD<br>Booklet on bust development technique | ID 1/181 (1973) |
| BRENTWOOD RESEARCH<br>Booklet on giving a special diet tonic | ID 1/173 (1973)<br>PS (1973) |
| JOE WEIDER, TRAINER OF CHAMPIONS<br>Booklet on martial arts course | ID 1/131 (1972) |
| PARKER PUBLISHING COMPANY, INC.<br>Book on high-protein diet | ID 1/84 (1974)<br>PS (1974) |
| PARKER PUBLISHING CO.<br>Book on foot reflexology | POD ID 3/80 (1971)<br>(Rev. in 1971) |
| PARKER PUBLISHING CO., INC.<br>Book on special diet to "eat your way to health" | POD ID 3/41 (1970)<br>PS (1971) |
| VIRTU IMPORTS, INC.<br>Book on aphrodisiacs & sex stimulants | POD ID 3/2 (1968)<br>DD 1968) |

Additional copies 50/$2.50 100/$4.00 from NHF, Box 688, Monrovia, CA 91016.

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(Exhibit #6)

AD #1

ADVERTISEMENT ADVERTISEMENT

# ARTERIES

## ARTERIES CAN CLEANSE THEMSELVES

*By my famous discovery, not the doctor's way!*
*New! Gov't says diet like this reduces CANCER risk!*

By Robert S. Ford

A startling new discovery shows how arteries can cleanse themselves without surgery. Just as your skin can cast out thorns, your arteries can cast out lumps when you stop forming them with the wrong foods. People say things like: "I learned how to eat, and avoided a surgical operation. No scars, no pain, no pills! Saved thousands and didn't miss a day's work. Now my arteries are clean all over, not just where they wanted to cut me. My anginal chest and leg pains are gone! No more standing still while the pain fades! The pulse is strong in my legs again! Cholesterol, blood pressure, and tri-glycerides are reduced to normal. Ear noises and dizziness are gone, and my memory is better. No more blackouts. I saved my eyesight! I learned how to control my weight, yet eat like a king! Tastier food, less kitchen work, less cost, less indigestion. And now my sugar is controlled without pills or needles! I wish I had learned about this sooner!"

You can read all about it in an exciting booklet by the original discoverer. It tells why the old cholesterol diets won't cleanse arteries. How by my discovery you can now enjoy many of the rich and tasty foods denied you by the old humbug cholesterol diets, while your own natural blood flow washes your arteries clean. It tells which familiar foods to eat and which to avoid.

No extra cost or risk. The booklet is fully guaranteed: Return for refund if not satisfied. Over 100,000 copies sold. Don't let yourself or your loved ones suffer and fade away from hardened arteries, heart attack, or stroke. Get your copy of the 48 page booklet "Stale Food vs. Fresh Food" by Robert S. Ford, only $6.00 plus $1.00 postage and handling = $7.00 total. Now in revised sixth edition, better than ever. Order your copy now from: Magnolia Lab, Dept X2, Box 1306, Pascagoula, MS 39567. Just send your name and address on any slip of paper, with $7.00 check, money order, or cash to get your copy fast by first class mail. Makes a fine gift, order extra copies for your friends & relatives.

© R S Ford 1983

AD #2

Advertisement

# ARTERIES

## ARTERIES CAN CLEANSE THEMSELVES WITHOUT DRUGS OR SURGERY.

By Robert S. Ford

A startling new discovery shows how arteries can cleanse themselves without surgery. Just as your skin can cast out thorns, your arteries can cast out lumps when you stop forming them with the wrong foods. People say things like: "I learned how to eat, and avoided a surgical operation. No scars, no pain, no pills! Saved thousands and didn't miss a day's work. Now my arteries are clean all over, not just where they wanted to cut me. My anginal chest and leg pains are gone! No more standing still while the pain fades! The pulse is strong in my legs again! Cholesterol, blood pressure, and tri-glycerides are reduced to normal. Ear noises and dizziness are gone, and my memory is better. No more blackouts. I saved my eyesight! I learned how to control my weight, yet eat like a king! Tastier food, less kitchen work, less cost, less indigestion. And now my sugar is controlled without pills or needles! I wish I had learned about this sooner!"

You can read all about it in an exciting booklet by the original discoverer. It tells why the old cholesterol diets won't cleanse arteries. How by my discovery you can now enjoy many of the rich and tasty foods denied you by the old humbug cholesterol diets, while your own natural blood flow washes your arteries clean. It tells which familiar foods to eat and which to avoid.

No extra cost or risk. The booklet is fully guaranteed: Return for refund if not satisfied. Over 100,000 copies sold. Don't let yourself or your loved ones suffer and fade away from hardened arteries, heart attack, or stroke. Get your copy of the 48 page booklet "Stale Food vs. Fresh Food" by Robert S. Ford, only $5.00 plus $1.00 postage and handling = $6.00 total. Now in revised sixth edition, better than ever. Order your copy now from: Magnolia Lab, Dept. Z, Box 1306, Pascagoula, MS. 39567. Just send your name and address on any slip of paper, with $6.00 check, money order, or cash to get your copy fast by first class mail. Makes a fine gift, order extra copies for your friends & relatives.

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PREPARED STATEMENT OF TRISHA KATSON, LEGISLATIVE AIDE, LIBERTY LOBBY

Mr. Chairman and Members of the Committee, I am Trisha Katson, legislative aide for Liberty Lobby. I appreciate this opportunity to appear today and present the views of our more than 30,000-member Board of Policy, as well as approximately a million readers of our weekly newspaper, The Spotlight.

Liberty Lobby opposes S. 450 and H.R. 1342. We believe the legislation will vastly increase the enforcement and investigatory powers of the Postal Service and we do not believe that this government agency should have such increased police powers when it has demonstrated in the past that it has abused such authority.

The proponents of this legislation (and H.R. 3973, S. 1407 and H.R. 7044, previous measures that failed to pass Congress last year) have promoted these bills as a way to help and protect the elderly who are victims of mail fraud. Liberty Lobby recognizes that there are con artists who deliberately bilk unsuspecting victims of their money in mail order schemes, and we deplore this. There must be a way to deal with this problem, but S. 450 is not the way. We are convinced that this bill will give the Postal Service further powers to harass legitimate businesses and deprive individuals of constitutional rights.

Specifically, we oppose four provisions of the bill: The power to issue cease and desist orders; the new civil penalties; the mirror doctrine, which we believe is flawed; and the consumer education program.

From its inception in 1981 as H.R. 3973 until today as S. 450/H.R. 1342, this legislation has been misunderstood. The promotion of all of these bills as a protection for the elderly enticed about 300 co-sponsors in the House and 26 in the Senate. However, this promotion disguised the fact that certain protections guaranteed by the Constitution were violated by the legislation. When a new House bill (H.R. 7044) was introduced, it had only three co-sponsors. Rep. Vin Weber publicly withdrew his name as co-sponsor of H.R. 3973. The point of this is that the legislation was presented in such a way as to conceal its dangerous aspects. Promotion of this measure made it difficult for members of Congress—once they had realized its negative implications—to oppose the bill for fear they would be accused of being against legislation to protect or help the elderly. And this is exactly the unfair accusation that Jack Anderson leveled against Sen. James McClure. Liberty Lobby applauds the senator for having the courage to put a "stop" on the bill last year to kill it in face of the inevitable political reprisals.

It is exactly the same attitude—the fear of being accused of being non-supportive of the elderly, who constitute a powerful voting bloc in this country—that has resulted in a "hands off" policy on the part of Congress toward the serious problems facing Social Security and which led to the formation of a "special commission" to deal with this dilemma.

One Liberty Lobby supporter, in a letter to Rep. Robert Badham, said that this postal legislation was for the benefit of a special interest group—senior citizens. But she gives the elderly a lot more credit than drafters of this legislation do. She says, "I'm sure the senior citizens of this country learned many, many years ago (the lesson of) 'Let the Buyer Beware' and would be insulted to know that probably many man-hours had gone into a piece of legislation that ostensibly is going to protect them."

This postal legislation has been misunderstood in another serious way. It was originally called "the mail fraud bills," and when it became clear that the measures dealt with the false representation statute and not mail fraud, this was still not understood. As late as last December, members of Congress were telling their constituents time and time again that this legislation fought mail fraud.

I had the opportunity to meet with and interview Postmaster General William F. Bolger a couple of weeks ago. The interview, which dealt with the postal bill among other issues, appears in this week's issue of The Spotlight. I would like to request that this interview be included in its entirety in the hearing record as part of my testimony at this time.

Although I found Postmaster General Bolger to be a most concerned public servant, I was surprised that he too referred to S. 450/H.R. 1342 as mail fraud legislation. When I pointed out to him that the measures dealt with the false representation statute—a civil offense—and not the mail fraud statute—a criminal offense—he replied, "I use these terms interchangeably, and I probably shouldn't, but I am a layman. Believe me, I am not a lawyer. I am often accused of practicing it, but I am not. The legislation is trying to give the inspection service more ways of investigating alleged mail fraud." If the U.S. Postmaster General does not understand that S. 450/H.R. 1342 deals with false representation and not mail fraud, then who would?

I was troubled by several other remarks Postmaster General Bolger made. He told me he was not familiar with the Postal Service's Feb. 11, 1982 banning through the mail of a book by Robert Ford which advocated a diet of natural foods as a way to keep arteries clean. He said he did not know of any "hit list" of publications that postal employees routinely checked for any false advertising. He told me he had no knowledge of a list of 20 books banned by the Postal Service—evidence of which was presented in hearing testimony by the Association of American Publishers. He said that he would check into these matters and get back to me, which he did. However, I found it disturbing that the U.S. Postmaster General was not aware of these facts.

Postmaster General Bolger told me that the Postal Service has a right to investigate any consumer complaints it receives. But there is a big difference between investigating complaints by consumers and putting a stop order on a book that had no consumer complaints filed against it—which is what happened in the Ford case.

Liberty Lobby is particularly concerned with the seeming preoccupation by the Postal Service with materials relating to health. The wording of S. 450/H.R. 1342 does not mention "health," but it is quite evident from past incidences that this legislation will target health remedies that are considered to be "unorthodox." The Spotlight believes in freedom of choice in health matters and publishes articles to inform its readers of choices in medicine which are available and go unreported often in the U.S media.

Postmaster General Bolger says that if the Postal Service is convinced by "experts" in the medical field that something going through the mails is "fraudulent or misleading to the public," then action should be taken. But this is a very dangerous concept that could prevent the free flow of ideas. This precedent was set in the Ford book case when the Postal Service court decided that the material was "contrary to the weight of informed medical and scientific opinion." Exactly what is the consensus of accepted medical and scientific opinion? Surely this is an ever-evolving entity. Freedom of expression in this area is protected by the Constitution. And who are these "experts" anyway? Is it fair to allow these so-called "experts" to decide for everyone else what is or is not medically or scientifically acceptable? And is it proper to give the Postal Service—a government agency—the authority to decide who is an "expert" and if convinced by this "expert" to have the power to prevent these ideas from being passed through the mails? Liberty Lobby says no, this is not right, and is a very dangerous thing to permit government interference into this area.

Although testimony today centers on S. 450/H.R. 1342, it is difficult to criticize this legislation without addressing the larger picture, and that is the movement toward increasing the enforcement and investigatory powers of the Postal Service. It is important to remember that S. 1407 could have easily been passed last year with little fanfare. This measure, which has proved to be extremely controversial, was ruled to be non-controversial and was passed by the Senate last May 19 by voice vote. Sen. Jesse Helms said it was passed "at a time when many senators were not even present." At least one, Sen. Orrin Hatch, said he would have voted against the meausre had he been present.

If S. 1407/H.R. 3973 had passed, it would have given the Postal Service a new subpoena power—the authority to issue "civil investigative demands" (CID's) and it would have outlawed the distribution of banned material not only by mail but any instrumentality of interstate commerce, just to name two powers. Indeed, the CID portion was only deleted last year when it became evident that the House would not otherwise pass the "clean" House bill (H.R. 7044).

It is clear that S. 450, as bad as it is is only another step toward increased Postal Service powers. The agency will be happy for now with what increased authority it gets under this bill, and then undoubtedly will try for more in the near future. Postmaster General Bolger said that his lawyers fought for a more stringent bill but he would have nothing of it.

So what happens when Postmaster General Bolger, who says that government has no business to get involved with everybody's life, is no longer in office? What happens if the head of the Postal Service is not so concerned with our freedom and liberties? How will the Postal Service be stopped from abusing the laws that Congress enacts which increase its powers?

For example, in hearing testimony, an exchange between Rep. William Dannemeyer and Postal Service Attorney George Davis illustrated how—as improbable and unthinkable and rediculous as it may seem—the Bible could be banned from the mail. The Bible could not be banned, Davis said, simply because it was judged to be outside the consensus of scientifically acceptable opinion, but rather because the First Amendment of the Constitution protects freedom of religion. Davis explained that the previously mentioned Ford case did not fit into the area of acceptable medi-

cal and scientific opinion. Dannemeyer, whom Liberty Lobby thanks for his efforts to fight the postal bill, pointed out that the First Amendment protects all free speech, not just that in the religious area.

I asked Postmaster General Bolger what would prevent the banning of the Bible by the Postal Service when the Bible, after all, contains material that could easily be argued as contradicting generally accepted scientific opinion. His only assurance to me was that he would never allow such a thing to happen, and furthermore, he would impeach—that's his word—anyone who would do that. And he said the postmaster general serves at the pleasure of the postal board who could meet in emergency session and kick out any person who would try to ban the Bible.

But Postmaster General Bolger did not say that the law would not allow that to happen. And this, I'll grant you, is an extreme case. Liberty Lobby finds no comfort in any law that would allow such a thing to happen and we find no solace in relying on the good grace or personal beliefs of those in public office.

Liberty Lobby prefers that bad laws as exemplified by the provisions of S. 450/H.R. 1342, if enacted, never be passed by Congress.

We urge you, Mr. Chairman and Members of this subcommittee, to put a stop to the spiraling increase of investigatory and enforcement powers by the Postal Service and to curtail government interference in this area.

We urge you to oppose S. 450.

Thank you again for the opportunity to appear today and present our views.

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[From The Spotlight, Mar. 7, 1983]

TRISHA KATSON'S INTERVIEW WITH POSTMASTER GENERAL WILLIAM F. BOLGER

(William F. Bolger, the 65th postmaster general of the United States, endorses the so-called "Mail Order Consumer Protection Act," which Rep. Claude Pepper (D-Fla.) tried to pass through Congress last year but which died in the lame duck session. The bill, which would increase the investigatory and enforcement powers of the Postal Service, has been reintroduced in the House by Rep. Mickey Leland (D-Texas) and in the Senate by Sen. David Pryor (D-Ark.).

(Bolger, who has 42 years of government service behind him, became postmaster general in 1978. When he was recently interviewed by Liberty Lobby Legislative Aide Trisha Katson in his Washington office, he answered questions about the postal bill as well as inquiries about the government monopoly on certain types of mail.)

*Question.* The Postal Service is sometimes criticized for its monopoly on the delivery of certain types of mail. Some believe that improved service and the lowering of postal rates could come about through competition, in the form of free enterprise. What is your view on that?

Answer. I'd turn over the keys to this building this afternoon if I found anybody in the private sector ready, willing and able to take on our task. We provide universal service at uniform prices—and that's serving everyone, every place.

I think that's proper in this country, that's what our system is built on—the free enterprise system. I haven't seen anything to beat it.

Government's function is simply to do what needs to be done for the people that they won't or can't do for themselves. Other than that, government has no business, in a republic, to get involved with everybody's life. I don't mind people questioning our so-called lettermen. It's a good subject to be brought up once in a while, but it should be looked at from the proper perspective—not just the smaller areas in the country where somebody could go in and make a profit.

One thing we don't want to do is go back to the taxpayers paying for what postal service ought to be conducted by the government.

*Question.* Sen. Steven Symms (R-Idaho) has been trying, for at least a decade, to pass legislation to end the government monopoly on the delivery of daily mail. What is your view of his efforts?

Answer. I think he's wrong. I don't think it's time, at this point, to destroy the universal postal service and uniform pricing. I question whether we could provide a proper level of service, at a proper price, to people in rural Idaho, for example. I don't know who's ready, willing and able to serve the armed forces at sea. I don't know how you can have a system of several or a dozen or 50 private systems trying to exchange mail in 162 countries every day.

I don't doubt for one minute that Sen. Symms is right that, in certain areas, there is a profitable market out there. I guarantee you, if all I had to do is take a region

in Maryland or Washington, D.C. with my delivery force, I'd do it cheaper than 20 cents a letter.

I firmly believe—and not for the good of the Postal Service, not for the good of the unions or management organizations, but in the public interest—that the private express statutes should pretty much be retained as they exist today. There may come a time in the next century when the system we now have isn't necessary, but, right now, it is.

*Question.* But you're not opposed to private enterprise entering into the picture, if it could be done?

Answer. Never opposed to it. I pay taxes in this country too. I understand that these things are necessary to support the activities of government, but I am a firm believer that things shouldn't be done by government that can properly be done by the private sector.

*Question.* But some argue that current law prohibits private enterprise from competing with the Postal Service.

Answer. Sure, because they would do the skimming of the cream—and I wouldn't blame them. If I were in the private sector, starting a new delivery business, I'm not so sure I'd be willing to serve Alaska or even Hawaii.

*Question.* Do you think there's any way to have a variety of different enterprises doing what the Postal Service is doing?

Answer. A number of different groups are doing it today, for instance, in presorting of mail. About 70–75 percent of our volume is involved in monopoly, and we still have 25 percent up for grabs. We don't have a monopoly on advertising if it is not specifically addressed.

United Parcel Service (UPS) has shown us what they can do in the parcel market, after years of neglect by the Postal Service.

*Question.* What do you think about repealing the 1970 Postal Reorganization Act?

Answer. I think it would be a horrible mistake. I don't have to say that to protect this job. I can retire.

It would be a horrible mistake to send it back to partisan politics—and you wouldn't be reducing the work force.

*Question.* If the 1970 Act is not repealed, how can private enterprise enter into areas they cannot legally enter into now?

Answer. The private express statutes are encompassed in the total postal reorganization structure, but you can still keep an independent organization and modify or repeal the statutes. If you let the cream skimming take place, I think there would still be a need for universal service. I think it would be very expensive, and a decision would have to be made as to whether it could function in a business-like fashion as we do today or whether you'd have to put a great deal of taxpayer's money in it to support it.

*Question.* Last year, the Mail Order Consumer Protection Act (H.R. 7044/S.1407) died in the lame duck session of Congress. The House passed it, but Sen. James McClure (R-Idaho) put a "stop" on it to review it—which killed it in the Senate, because time ran out. Did you endorse this legislation?

Answer. I was deeply concerned about the original House bill (H.R. 3973). I was not concerned with H.R. 7044.

*Question.* What about the provision giving the Postal Service the power of subpoena through a "civil investigative demand" (CID)?

Answer. I think that was rightly deleted in the final version. Rep. Mickey Leland (D-Texas) (chairman of the House Post Office Committee's Subcommittee on Postal Personnel and Modernization) has introduced, in this Congress, H.R. 1342, which is the same as the bill that finally passed the House last year.

I've endorsed H.R. 1342. Virtually all of the opposition to previous versions focused on the provision to allow the Postal Service to issue CIDs and to obtain access to documents relative to suspicious advertising. That's been deleted—and the rest of the bill, I think, will help the Postal Service do a better job

*Question.* But the die-hard opposition, like Liberty Lobby and the National Health Federation, still opposes other things in the bill—like the cease-and-desist orders, the civil penalties, the "flawed mirror" doctrine, the consumer education section.

Answer. I'm sure some persons and some organizations may find fault with it, but I think it's a good bill. And if it's enacted into law, it will be responsibly administered.

*Question.* What about the $20,000-a-day penalties for someone who violates a stop order? Under current law, there are no such fines. Don't you think this is excessive?

Answer. I don't think there's any sense, if you want to stop something that is fraudulent, to impose minor penalties. You have to make it meaningful; you have to have something to get their attention.

*Question.* One section of the bill would set up a consumer education program. Do you think it's the job of the Postal Service to educate people?

Answer. We're not in the education business as such, but if we have information that should be disseminated to the public, obtained through the efforts of postal employees, yes, it should be. Having experts in certain fields talk to public groups is a good idea but we shouldn't get involved in some type of "academy."

*Question.* What would prevent the Postal Service from implementing adverse publicity against certain health remedies?

Answer. Those medical controversies are not for the Postal Service. We are not experts in the medical field. I think when we have a reason to be involved in something that may be fraudulent or misleading to the American public and is passing through the mails—when experts in those fields convince us that is the case—perhaps we should take some action under the law. But we are not going to make judgments on what is medically sound or unsound for the American public.

*Question.* On February 11, 1982, the Postal Service banned the sale through the mail of a book by Robert Ford, which advocated a diet of natural vegetables as a way to keep arteries clean. The Postal Service ruled that this book was "contrary to the weight of informed medical and scientific opinion."

Do you think the Postal Service should decide what falls into such a category?

Answer. I think it's the Postal Service's job to investigate alleged fraud through the mail, and they need the proper tools to get the investigations completed. The prosecution of offenders should be left up to the federal judiciary. We have a job to protect consumers who get merchandise through the mails.

*Question.* Obviously there is a conflicting view on what the job of the Postal Service should be. Rep. William Ford (D-Mich.), chairman of the House Post Office Committee, said that in the spirit of Benjamin Franklin, who devised the system, the Postal Service has a duty to carry anything in the mails that isn't going to explode or cause a fire, and that it's not the Postal Service's business what people put in there.

Answer. I can't agree with that. I don't think the postmaster general should censor the mail, but I think the Postal Service ought to look at what is going in the mails and investigate the complaints that we get. If people are being defrauded, we ought to take the proper action working with the Justice Department, to take the alleged culprit into court and attempt to prosecute him.

*Question.* You've used the words "fraudulent" or "fraud" often. The legislation we've been discussing didn't amend the mail fraud statute; it deals with the "false representation" statute.

Answer. I use these terms interchangeably, and I probably shouldn't, but I am a layman. Believe me, I am not a lawyer. I am often accused of practicing it, but I am not. The legislation is trying to give the inspection service more ways of investigating alleged mail fraud. Our lawyers fought harder for a more stringent bill, and I wouldn't have any part of it.

*Question.* Chairman Ford has said that the Postal Service is doing more than the Justice Department in determining whether or not the law is broken in the use of the mail. Do you agree with him?

Answer. The Justice Department represents us, as they do other government agencies. I suppose you could get the idea that our inspection service and lawyers are involved more in that than the Justice Department. When we need them to work with us, they do it very well in most cases.

*Question.* Liberty Lobby and readers of The Spotlight realize that there are people out there who are knowingly trying to deceive innocent people by ripping them off, and we are not trying to protect these criminals. We are concerned about legislation like this postal bill because the increased investigatory and enforcement powers given the Postal Service may be used to harass legitimate businesses.

Answer. It's a very worrisome and difficult thing. I don't suggest that if this bill is enacted into law, that it is going to be administered perfectly. We're dealing with a bunch of human beings in the world. It is incumbent upon the law enforcement people in the agency to exercise that responsibility.

I don't pretend for a minute that somebody may not get out of line at some point in time. It's always risky.

I guarantee one thing. I would not knowingly let any legislation be enacted that would deny due process to people, no matter how much you're trying to protect the people. We have had some problems with denying due process to people.

*Question.* In what areas?

Answer. Invading people's privacy, getting into things under the guise of law enforcement that we have no right to get into. I don't believe in that. We have a feder-

al judiciary system and we have laws, and that is what we ought to be working with.

*Question.* According to statistics from the Postal Inspection Service's reports of 1978-81, in about 90 percent of prosecutions brought under Section 3005—that's the false representation statute—the Postal Service administrative courts ruled against the groups or individuals accused of wrongdoing. With such one-sided statistics, do you think the Postal Service courts are fair?

Answer. I hope our people investigating these things are only bringing cases to that level of administrative law that have to be brought and they must be pretty darn solid cases or they wouldn't get that far. People sometimes think this is the only remedy that is available to the person accused. But beyond that there are the federal courts.

*Question.* But appealing to a federal court as a method of recourse is very costly. How do you solve that?

Answer. I don't know if you can solve it. We are over-burdening our federal courts with a lot of things they can't handle as promptly as they should. These things drag on, and it's not the fault of the courts.

*Question.* Would you approve of a law or an amendment to a law to provide attorney's fees for people who have appealed to a federal court and have won against a Postal Service ruling?

Answer. No, I couldn't endorse that. That's another expense on the part of the Postal Service. Would they pay our fees if we won a case?

*Question.* Rep. William Dannemeyer (R-Calif.), the most outspoken opponent of the Pepper bill in the House, presented evidence of a Postal Service "hit list" of publications that Postal Service employees routinely check to find any false representation in advertising. Do you approve of this?

Answer. Our inspection service is indeed monitoring all kinds of publications, looking for ads—even publications some of us consider to be in the highest order. I don't find any fault with that. Publishers can't necessarily control whom they're selling advertising space to, and they don't have the information the inspection service might have.

*Question.* The actual wording of the postal bill doesn't mention health at all. It pertains to any kind of material put in the mail—and yet, most of the 20 books banned by the Postal Service deal with the area of health. Is there any reason for this seeming preoccupation with health products by the Postal Service?

Answer. Not in particular. It would depend upon the types of complaints we are getting from people who receive the mail. There is a variety of things other than health that come through the inspection service that go into the prosecution of mail fraud. There are a lot of people getting bilked with the fraudulent solicitation of funds.

*Question.* Columnist James Kilpatrick says, "In a free country, the right to spend our own money embraces the right to waste it if we so choose."

Answer. Everybody is entitled to his own opinion. I get madder than hell when I see there is a government requirement to put seat belts in cars when I don't particularly want to use them. I have the same problem. But I have a responsibility here if I see something that needs to be done.

*Question.* Two reports recommending changes in the Postal Service were recently released—one a book by Ralph Nader and one by the Heritage Foundation. Both criticized the 1970 Postal Reorganization Act. What is your opinion of these reports?

Answer. The Nader report basically rehashed a lot of old chestnuts and just took things out of context and never expanded on them at all. Nader says that we are charging exorbitant rates of the consumer. We are not, at all.

He just completely ignores the fact that we have had inflation in this country several times in double digits. He completely ignores the fact that if we were giving a letter a true cost allocation, instead of bringing it together in the mass volume that we have with universal pricing, it would be a great deal more than 20 cents.

It all boils down to a debate between Nader and myself on a thing called POCAG—the Post Office Consumer Advocate Group. He wanted me to work hand in hand with him to solicit funds for it, and I turned him down.

My interest is to provide a good level of service at reasonable cost and keep the rates as low as possible for as long as possible, and I think I'm doing that. I'm not saying we don't make a lot of mistakes at the Postal Service—indeed we do, too many to satisfy me.

*Question.* What do you think of the Heritage Foundation's proposal for the Postal Service to contract operations out to the lowest private sector bidder and act as an umbrella organization responsible for postal service?

Answer. We contract a lot of our things out. Most of our highway transportation and all of our air service is contracted out. We use the railroads on a contract basis, where tariffs are approved by someone.

We are a labor-intensive agency, so the cost of our labor is 84 cents of every dollar we spend.

*Question.* What do you think of the estimate that the Postal Service will need a subsidization of $2–3 billion a year over the next five years?

Answer. Even if we needed it, I don't think those taxpayer dollars are available. But we won't need it. That doesn't mean we won't need price increases somewhere along the line if our costs go up.

The downturn in inflation has helped us, and I hope that keeps up. In the meantime, things are working out well. We are not getting any public service subsidies, and we are living within our income.

*Question.* In hearing testimony, Rep. Dannemeyer questioned George Davis, a Postal Service attorney, on the possibility that last year's H.R. 7044—and therefore H.R. 1342 now—could ban the mailing of the Bible if it was judged by the Postal Service, someday, not to embody the consensus of established medical and scientific opinion. Davis said this could never happen because the First Amendment of the Constitution protects speech in the religious area.

Answer. Why did he limit it to the religious area?

*Question.* That's exactly what Dannemeyer asked Davis, who answered that in the Ford case previously mentioned, the book didn't fit into the area of generally accepted medical and scientific opinion. What would prevent the Postal Service from banning the Bible if it was decided that the Bible didn't fit into this category?

Answer. Obviously the person who could do most about it to make sure this wouldn't happen is the postmaster general, and I assure you I wouldn't let that happen. This doesn't apply just to the Bible, but people who want to put out pamphlets that say there is no God have a right to express that too.

I take some criticism about our Christmas stamps that depict the holiday in a religious way, and I take criticism the other way with stamps that might show some holly or toys.

*Question.* But what if the Postal Service had a postmaster general who didn't believe in issuing religious stamps and decided he didn't like the Bible either?

Answer. I would impeach him and throw him out of office. People appoint me. I have a 30-day appointment and serve at the pleasure of the board. The board could meet in an emergency session and get rid of any postmaster general who thinks he would have that authority. I would certainly recommend that, if I were a citizen on the outside.

*Question.* What this all comes down to—and Liberty Lobby believes it is exemplified with legislation like the Postal Bill—is that there is a growing concern that the Postal Service is getting too powerful. Some call it police power. Are you aware of these concerns, and do you think they are legitmate?

Answer. I am being made aware, through efforts like the movement of legislation, that there are people concerned about what might be happening to their lives because government agencies, including the Postal Service, may be perceived as getting more power. That concerns me too. I'm not looking for more power for the Postal Service or for any other government agency. I'm a citizen of this country too as well as being an official.

That isn't why we were advocating the Mail Order Consumer Protection Act. If it were a power play on our part, to give us more authority to interfere with other people's lives, I wouldn't tolerate it for a minute. I think it's a necessary step to help us do for the people what they want us to do. They're speaking for their elected representatives and if we advocate something that's wrong, the elected representatives of the people should take action to not agree with us.

We are trying to find the right solution to these problems. That will benefit all the people—recognizing that with anything you do, there will be somebody that might be opposed to it or even some person who might be injured by your actions.

Senator STEVENS. Are there any other statements?

If not, the hearing record is closed. Thank you all.

[Whereupon, at 11:25 a.m., the subcommittee was recessed, subject to the call of the Chair.]

# ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

(501) 371-2007

March 2, 1983

Senator Ted Stevens
Chairman, Subcommittee on Civil
Service and General Services
57 Capital Hill Apartments
Washington, D. C. 20510

Dear Senator Stevens:

Thank you for the opportunity to express my views on S.450, a bill to strengthen the enforcement powers of the U.S. Postal Service to deal with mail fraud and abuse. I commend you on your efforts.

On October 13, 1981, I testified in support of this issue before the subcommittee. At that time the bill was S.1407. I enclose a copy of my testimony and ask that it be included in the record.

As I understand it, S.450 is a similar bill that will amend Title 39 of the U.S. Code to strengthen the enforcement powers of the U.S. Postal Service to deal with schemes perpetrated through the mail. It will give the Chief Postal Inspector the same subpoena powers given to the Inspectors General in most government agencies.

It has been my experience as Attorney General of the State of Arkansas that mail order fraud is the number one complaint in the Consumer Protection Division of my office, with the elderly as primary targets. S.450 is an important measure that provides a solution to a critical problem in Arkansas.

I support you in your efforts and believe S.450 is necessary legislation that will heighten enforcement powers of the Postal Service and will assist in the protection of citizens in problems with mail fraud and abuse.

Sincerely,

Steve Clark

STEVE CLARK
Attorney General

JSC:kbs

(October 13, 1981)

TESTIMONY OF STEVE CLARK
ATTORNEY GENERAL OF THE STATE OF ARKANSAS

Thank you very much. I am pleased to be here and echo some of the sentiments expressed by the Postal Inspector, and to at least give to you some overview of what we see the Arkansas situation to be with mail order fraud and mail order solicitation.

Mail order fraud and mail order solicitation and related complaints consistently rank as our No. 1 complaint category in our consumer protection division, with 2,150 complaints in 1980, and with 1,451 complaints thus far in the first 8 months of 1981.

If direct contact with a company fails to resolve a complaint our only recourse is to enlist the aid of the attorney general's office in that particular State; or if it appears to be a fraudulent operation, then we notify the postal inspector's office.

In many instances this office is not effective in dealing with these schemes simply because the individuals operating the schemes are aware of the legal limitations of my office.

Recently, the consumer protection division of my office issued a civil investigation demand for information from a Texas-based operation that was advertising in smalltown Arkansas newspapers that a person could make $411 a week by just working in their program 3 1/2 hours a day. The investigative demand requested the packet of information that Arkansas consumers were being asked to pay a $15 application fee for - the company's response was a flat refusal. It is in situations like this that

we must rely totally upon the Postal Service.

To give you some other idea of the kinds of schemes we face daily here in Arkansas, the Postal Inspector indicated some work-at-home schemes. In July of this past year, my office entered into a consent decree with O & N Enterprises. This was basically a work-at-home scheme operated by a Nigerian national that advertised in several national publications using a Pine Bluff post office box.

The ads offered a work-at-home, envelope-stuffing operation where a person could earn 65 cents per stuffed envelope. A $25 fee was required to receive instructions. However, after an individual would send his $25 fee, he would only be sent a mimeographed instruction kit that would show him how to advertise for others to stuff envelopes.

We issued a subpoena for the O & N Enterprises records from three different banks. The results were that in a very short period of time of 3, 4 months, O & N had received approximately $20,000, primarily from out-of-state residents. The consent decree ordered complete restitution and prohibited all advertising in connection with envelope-stuffing schemes.

This O & N Enterprises is a little unusual in the fact that the consumer protection division investigated and successfully resolved the situation, because the vast majority of the time "tables are turned" and the perpetrators of such schemes are located in other States and Arkansas residents are the victims. It is in these situations that this office must depend heavily on the U.S. Postal Inspectors for assistance.

In the late spring of 1980, a California-based mail scheme to bill Arkansas businesses for advertising in nonexistent magazines. The consumer division began to get a heavy influx of calls and complaints of collection efforts from nonexistant "Jack Strong" demanding a $48 payment for advertising supposedly run in one of the six nonexistent magazines outside of Arkansas, and therefore beyond the long reach of our arm of the State, and we have to depend heavily on the U.S. Postal Inspectors for assistance.

All our office could do was publicize the scheme. It was later determined that the address of the phony magazines were merely mail pickup points. This office warned Arkansas business people about the operation and referred all complaints to the U.S. attorney's office in Los Angeles.

In July of 1980, a Mr. Andrew Wolstein was convicted of five counts of mail fraud, sentenced to 7 years in prison and fined $10,000. But once again, before our office could publicize the scheme, dozens of people paid for ads in nonexistent magazines and in a relatively short period of time, Wolstein collected a large sum of money.

Another kind of problem we see used, in terms of fraudulent schemes through the mail, deals with, for example, a retail oil association rebate. Ads were placed exclusively in smalltown newspapers throughout Arkansas advertising a rebate of 50 cents per gallong of gas purchased in the past year.

The ad represented that the rebate was being imposed under official government regulations and requested that consumers fill

out applications and send a $5 processing fee. We were advised by the Alabama Attorney General's office that a check with the Department of Energy and several major oil corporations resulted in finding that no rebate was "officially" being offered.

It turns out that the address in Heflin, Ala., was only a post office box and the individual picking up the mail was being paid by two men from Houston, Tex., to pick up the mail and send it to them. It was estimated that over 200 pieces of mail per day, or $1,000 a day for over a month, arrived at the box before it could be publicized.

One other thing that I should mention is that almost all, or the vast majority, of mail fraud schemes that are perpetrated on Arkansas citizens are done so by individuals outside the boundaries of Arkansas. Thus our enforcement posture against these long-distance ripoffs is very weak.

The most effective thing this office can do is to publicize the schemes and, through consumer education, try to make Arkansas aware. These examples given demonstrate how large sums of money can be accrued in a relatively short period of time before effective warnings can be issued. The ability of the postal authorities to swiftly and efficiently investigate these schemes is of primary importance.

Time is of the essence in dealing with mail fraud operations, and this legislation the Senator has proposed would vastly improve the time element involved in the enforcement of such operations. Detection by issuing a money order to purchase the product to initiate the investigation, investigation aided by subpoena authority, and termination of the operation allowed by a court

order prohibiting such activities can only result in a more complete job of protecting Arkansas consumers in their dealings with mail fraud and mail abuse.

One other theme that is almost synonymous with mail fraud is the fact that the elderly are primary targets. In Arkansas, a recent survey shows 18.5 percent of our population are 60 years of age, plus. Of these, 43 percent are unable to drive a car and 70 percent are on social security or other forms of fixed incomes.

This means that the elderly persons' primary mode to transact business in the market place is by mail. Also, the lure of well-paying "work-at-home" schemes is of particular temptation because many of the elderly have limited incomes. Tightened enforcement capabilities would particularly benefit in the protection of the elderly from mail fraud. And I certainly support the legislation being offered by the Senator as something that will heighten enforcement and will aid in protecting Arkansans in their particular problems with mail fraud and mail abuse.

98TH CONGRESS
1ST SESSION

# S. 450

To amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1983

Mr. PRYOR (for himself, Mr. STEVENS, Mr. HEINZ, and Mr. GLENN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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# A BILL

To amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Mail Order Consumer Protection Amendments of 1983".

CEASE-AND-DESIST ORDERS; MIRROR IMAGE DOCTRINE; TEST PURCHASE AUTHORITY

SEC. 2. (a) Section 3005(a) of title 39, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.".

(b) The first sentence of section 3005(d) of such title is amended—

(1) by striking out "or" before "(2)"; and

(2) by inserting before the period a comma and "or (3) an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication, if (A) such advertisement is not materially false or misleading in its description of the publication, and contains no material misrepresentations of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication and any opinions ex-

pressed about such publication, and (C) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme".

(c) Section 3005 of such title is amended by adding at the end thereof the following new subsection:

"(e)(1) In conducting an investigation to determine if a person is engaged in any of the activities covered by subsection (a) of this section, the Postmaster General (or any duly authorized agent of the Postmaster General) may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails.

"(2) A failure to provide the article or service offered after the Postmaster General or his agent has tendered the money or property in the manner described in paragraph (1) of this subsection, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of this section has occurred.

"(3) The Postmaster General shall prescribe regulations under which any individual seeking to make a purchase on behalf of the Postal Service under this subsection from any person shall—

"(A) identify himself as an employee or authorized agent of the Postal Service, as the case may be;

"(B) state the nature of the conduct under investigation; and

"(C) inform such person that the failure to complete the transaction may be considered in a proceeding under section 3007 of this title to determine probable cause, in accordance with paragraph (2) of this subsection.".

CIVIL PENALTIES; SEMIANNUAL REPORTS

SEC. 3. (a) Chapter 30 of title 39, United States Code, is amended by adding at the end thereof the following new sections:

**"§ 3012. Civil penalties**

"(a) Any person—

"(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or 3005(a)(2) of this title;

"(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

"(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to

evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

"(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the Postal Service may commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which such conduct occurred or in which the defendant resides, transacts business, or receives mail.

"(2) If the district court determines that a person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the court shall determine the amount of any civil penalty under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations of such subsection, and, with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful busi-

ness, any history of prior violations of such subsection, the degree of culpability, and such other matters as justice may require.

"(c) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

**"§ 3013. Semiannual reports on investigative activities of the Postal Service**

"The Postmaster General shall submit semiannual reports to the Board summarizing the investigative activities of the Postal Service. One semiannual report shall be submitted for the reporting period beginning on October 1 and ending on March 31, and the other semiannual report shall be submitted for the reporting period beginning on April 1 and ending on September 30. Each such report shall be submitted within sixty days after the close of the reporting period involved and shall include with respect to such reporting period—

"(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

"(2) the number of cases in which the authority described in section 3005(e) of this title was used;

"(3) the number of applications for temporary restraining orders or preliminary injunctions submitted

under section 3007 of this title and, of those applications, the number granted;

"(4) the total amount of expenditures and obligations incurred in carrying out the investigative activities of the Postal Service; and

"(5) such other information relating to the investigative activities of the Postal Service as the Board may require.

Upon approval of a report submitted under the first sentence of this section, the Board shall transmit such report to the Congress.".

(b) Section 3012 of title 39, United States Code (as added by subsection (a) of this section) shall apply with respect to conduct which occurs on or after the date of the enactment of this Act.

(c) The analysis for chapter 30 of title 39, United States Code, is amended by inserting after the item relating to section 3011 the following new items:

"3012. Civil penalties.
"3013. Semiannual reports on investigative activities of the Postal Service.".

CONSUMER EDUCATION PROGRAM ON SCHEMES INVOLVING FALSE REPRESENTATIONS

SEC. 4. (a) As soon as practicable after the date of enactment of this Act, the Postmaster General or his designee, following consultation with representatives of the mail order industry, shall develop and carry out a program designed to

provide consumer education to the public on schemes involving false representations through use of the mails, including the dissemination of information on recognizing practices commonly associated with such schemes, as well as appropriate measures which an individual may take upon receiving mail matter which the individual believes may be part of such a scheme.

(b) A summary of the activities carried out under subsection (a) shall be included in each annual report rendered by the Postmaster General under section 2402 of title 39, United States Code.

SECTIONAL ANALYSIS OF S. 450

Section 1 of the bill provides for a short title: "The Mail Order Consumer Protection Amendments of 1983".

Section 2(a) of the bill amends 39 U.S.C. 3005(a) to provide that the Postal Service may issue orders to require persons to cease and desist from engaging in false representation schemes. Such orders--as with the Postal Service's existing authority to issue "stop mail" and "stop payment" orders under section 3005--may be issued only after opportunity has been given for a hearing on the record pursuant to the Administrative Procedures Act.

Section 2(b) of the bill amends 39 U.S.C. 3005(d), adding a new paragraph (3) to provide that nothing in section 3005 shall prohibit the mailing of an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication if (A) such advertisement is not materially false or misleading in its description of the publication, and contains no material misrepresentations of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication and any opinions expressed about the publication, and (C) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme. This new paragraph (3) is intended to preclude the Postal Service from bringing cases against persons who market books and other publications through the mails by means of advertisements that are not materially false or misleading in their description of the book or other publication.

Section 2(c) of the bill amends 39 U.S.C. 3005 by adding a new subsection (e) to provide that, in conducting an investigation to determine if a person is engaged in a false representation scheme or any of the other activities covered by subsection (a) of section 3005, the Postmaster General or his duly authorized agent may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails. Subsection (e)(2) provides further that a failure to provide the offered article or service after the Postmaster General or his agent has reasonably tendered the money or property may be considered by the court (along with any reasons for such failure) in determining whether, for purposes of deciding whether to issue a temporary mail detention order pursuant to 39 U.S.C. 3007, there is probable cause to believe a violation of 39 U.S.C. 3005 has occurred. The new section 3005(e)(3) as added by section 2(c) of the bill requires the Postmaster General to prescribe regulations guaranteeing that the Postal Service agent tendering the price must accurately identify himself, state the nature of the conduct under the investigation, and inform the person that failure to complete the transaction may be presented to a court as a

factor to be weighed by the court in deciding whether there is probable cause to issue a temporary mail detention order under 39 U.S.C. 3007.

Section 3(a) of the bill provides authority for civil penalties. A new 39 U.S.C. 3012 provides that a person shall be liable to the United States for a civil penalty if he: (1) through the use of the mail, evades or attempts to evade the effect of a "stop mail" or "stop payment" order issued under 39 U.S.C. 3005(a)(1) or 39 U.S.C. 3005(a)(2); or (2) fails to comply with a "cease and desist" order issued under 39 U.S.C. 3005(a)(3); or (3) (unless he is a publisher of a newspaper or other periodical publication) has actual knowledge of such 39 U.S.C. 3005(a) order, is in privity with any person evading, attempting to evade, or failing to comply with such order, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail. The penalty shall be in an amount not to exceed $10,000 for each day that the person engages in such conduct. A separate penalty may be assessed with respect to each type of conduct described by section 3012. As described below, only a court may impose these civil penalties.

The new 39 U.S.C. 3012(b) sets forth the procedures for determining whether a penalty should be imposed and, if so, how much. Subsection (b)(1) provides that, when the Postal Service finds that a person has engaged in, or is engaging in, conduct described in 39 U.S.C. 3012(a), it may (acting through the Justice Department) commence a civil action in the appropriate U.S. district court to enforce the established civil penalties. Subsection (b)(2) provides that the court shall first determine whether the person is engaging in or has engaged in such conduct. If the court determines that a penalty is justified, it shall then determine the amount of the penalty, taking into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, his ability to pay, effect on his ability to conduct lawful business, history of prior violations, the degree of culpability, and such other matters as justice may require.

Section 3 of the bill also adds a new 39 U.S.C. 3013, requiring twice-yearly reports to the Congress on the investigative activities of the Postal Service. The new 39 U.S.C. 3013 provides that the Postmaster General shall submit semiannual reports to the Postal Service Board of Governors summarizing the investigative activities of the Postal Service. Each such report shall be submitted within 60 days after the close of the reporting periods ending March 31 and September 30, respectively, and shall include with respect to the reporting period involved: (1) a summary of any proceedings instituted under 39 U.S.C. 3005, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period; (2) the

number of cases in which the purchasing authority described in the new 39 U.S.C. 3005(e) was used; (3) the number of applications for temporary restraining orders or preliminary injunctions submitted under 39 U.S.C. 3007 (i.e., temporary mail detention orders) and, of those applications, the number granted; (4) the total expenditures and obligations attributable to investigative activities of the Postal Service; and (5) such other information relating to the investigative activities of the Postal Service as the Board may require. Upon approval of each report submitted under this new section, the Board shall transmit it to the Congress.

Section 3(b) of the bill provides that the new 39 U.S.C. 3012 shall apply with respect to conduct which occurs on or after the date of enactment.

Section 3(c) of the bill amends and conforms the chapter analysis for chapter 30 of title 39, U.S.C., to reflect the addition of the new sections 3012 and 3013.

Section 4 of the bill establishes a consumer education program on schemes involving false representations. Section 4 requires that, as soon as practicable after enactment, the Postmaster General or his designee, following consultation with representatives of the mail order industry, shall develop and carry out a program designed to provide consumer education to the public concerning schemes involving false representations through use of the mails. The program shall include the dissemination of information on recognizing practices commonly associated with such schemes, as well as information on appropriate measures to take upon receiving mail matter which the recipient believes may be part of such a scheme.

Section 4(b) of the bill requires that a summary of consumer education activities be included in the regular annual report of the Postmaster General.

○